

CHIEF JUSTICE'S COURT
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE VIKRAM NATH
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE ATUL S. CHANDURKAR

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

SPL.REF. No. 1/2025 XVII-A

IN RE: ASSENT, WITHHOLDING OR RESERVATION OF BILLS BY THE
GOVERNOR AND THE PRESIDENT OF INDIA

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10:30 AM

TUSHAR MEHTA: Before my learned friend begins, My Lord, can I seek Your Lordships' leave. There are two matters, My Lord, if I can go for two matters. Not a professional matter, some matters are, My Lord, circulated. I am appearing for the Government of India for some time, My Lord. Second, I have received instructions, My Lord, if my learned friend is going to rely upon examples of Andhra or something, then we would like to file a reply from the inception after Independence, how the Constitution was taken on a joyride, particularly on these Articles also, whether we want to travel to that dirty path or confine to the questions asked.

CHIEF JUSTICE BR GAVAI: We are not going to go to the individual matters. We are only going to interpret the Provisions of the Constitution.

TUSHAR MEHTA: That's all. Then we will assist Your Lordships only on law. But if he's trying to...

JUSTICE VIKRAM NATH: Answer the question.

CHIEF JUSTICE BR GAVAI: Answer the question. We are not going to go into the question as to what has happened in Karnataka, what has happened in Telangana, what has happened in Maharashtra.

TUSHAR MEHTA: And My Lord, we'll also confine... I have also confined myself, My Lord to that, grateful.

ABHISHEK MANU SINGHVI: Rather than engaging with them now and eating up my time, let me go on, My Lords, with the matter.

CHIEF JUSTICE BR GAVAI: Yes. They've already eaten up, one and half hours.

ABHISHEK MANU SINGHVI: Page 50... As we are now single Counsel, single State rule, we'll be within our time.

CHIEF JUSTICE BR GAVAI: Yes.

ABHISHEK MANU SINGHVI: Now, it is 54 to 60 where Your Lordships had stopped. My written submission 2.2. Give me the correct speech. Don't do those things. Which is Your Lordships' Volume 2.2, 533 is the larger page and the smaller page is 54.

- 1 **JUSTICE VIKRAM NATH:** Yes. Page 400 and...?
- 2 **ABHISHEK MANU SINGHVI:** 533, larger page. The smaller page is 54.
- 3 **JUSTICE VIKRAM NATH:** Yes.
- 4 **ABHISHEK MANU SINGHVI:** All My Lords have it? My volume is 2.2.
- 5 **CHIEF JUSTICE BR GAVAI:** You have already travelled beyond that?
- 6 **ABHISHEK MANU SINGHVI:** Yes, Your Lordships, travelled through pages beyond that.
- 7 **CHIEF JUSTICE BR GAVAI:** You have travelled to *Kameshwar Singh*.
- 8 **ABHISHEK MANU SINGHVI:** Correct. So, My Lord is right. Absolutely correct, Your
 9 Lordship remembers. This 54 smaller page till 60 is the theme, half of which Your Lordship
 10 has done. The theme is actually withholding assent simpliciter. Justice Narasimha doesn't
 11 have it. My Lord has got that? 2.2, My Lord, my submission.
- 12 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It is 5...?
- 13 **ABHISHEK MANU SINGHVI:** 2.2, 533 which is small page 54. My Lord will use the small
 14 page, 54. Justice Surya Kant has got it. So six pages till page 60 is the issue of withholding
 15 assent simpliciter which otherwise colloquially we are calling falling through, falling through.
 16 Now, My Lords, I will not read these six pages because half of it Your Lordships have done.
- 17 **CHIEF JUSTICE BR GAVAI:** So, 60 is simply withholding...
- 18 **ABHISHEK MANU SINGHVI:** Assent simpliciter... withholding assent simpliciter, which
 19 we are discussing along with the 'falling through' concept. Falling through is not a head by
 20 itself. It's the withholding simpliciter category which is also linked to falling through. Now,
 21 instead of reading these six pages, three of which I think Your Lordships have already read.
 22 Let me to focus give Your Lordships six bullets of my entire argument on falling through at
 23 this point. Your Lordships may do me the favour of noting it down, just two-two lines each
 24 because that will be focused. It's dealt within these six pages. My Lord, No. 1, falling through
 25 is not an independent argument, obviously. It is a simpliciter withholding explanation. That's
 26 one. So you have to see it in the light of, is there a category of simpliciter withholding, which
 27 my learned friend, also describes as falling through. Is there a new, separate category of
 28 withholding simpliciter?

1 No. 2. The falling through occurs, unless the first Proviso is completed, is what those two
2 judgments mean. The falling through occurs unless the first Proviso is completely followed,
3 point 2.

4 **CHIEF JUSTICE BR GAVAI:** So, their argument is...

5 **ABHISHEK MANU SINGHVI:** He just holds it back and doesn't have to return it.

6 **CHIEF JUSTICE BR GAVAI:** Yeah. Hold it back, and even if you don't follow...

7 **ABHISHEK MANU SINGHVI:** Correct. I'm answering that. I'm answering that. So my
8 answer is, no. The falling through occurs only when the entire first Proviso is not followed.
9 There is no falling through by holding assent back and not sending it back. And let me explain
10 my third point, how that happens. The first Proviso is a complete code in itself and it involves
11 compositely and telescopically the following steps. Withholding and returning back is one
12 telescoped composite step. Withholding assent and sending back, returning the Bill is one
13 telescoped composite step.

14 **CHIEF JUSTICE BR GAVAI:** Withholding and sending...

15 **ABHISHEK MANU SINGHVI:** Returning. My Lords, call it sending back. We are not using
16 Constitutional terms, just sending back is one composite step. Second, reconsideration by the
17 House is step two. All a complete code. The framers have thought of it, put it in the first
18 Proviso.

19 **CHIEF JUSTICE BR GAVAI:** And what is the second, this thing?

20 **ABHISHEK MANU SINGHVI:** Reconsideration by the House, the Assembly.

21 **CHIEF JUSTICE BR GAVAI:** Reconsideration. Yes.

22 **ABHISHEK MANU SINGHVI:** Third, repassage by the Assembly. They are linked, but I'm
23 separating them.

24 **CHIEF JUSTICE BR GAVAI:** Repassage or repassing?

25 **ABHISHEK MANU SINGHVI:** Repassing. I mean, this repassing. Correct, repassing by
26 the Assembly.

27 **CHIEF JUSTICE BR GAVAI:** By the Legislature.

1 **ABHISHEK MANU SINGHVI:** Legislature.

2 **CHIEF JUSTICE BR GAVAI:** Assembly because it could be, if it is a Bicameral House.

3 **ABHISHEK MANU SINGHVI:** Correct, correct, My Lord. And returning to the
4 Honourable Governor. Now, there are innumerable actual cases, and perfectly
5 understandable. That's my 6th... 5th point or 4th point, that the Assembly may not want to
6 send it back, may not want to pass it.

7 **CHIEF JUSTICE BR GAVAI:** Then it would...

8 **ABHISHEK MANU SINGHVI:** May have a change in policy, may decide to completely
9 modify it out of identity. Your Lordships don't have to consider all the possibilities.

10 **CHIEF JUSTICE BR GAVAI:** [UNCLEAR] only in that event it will fall through.

11 **ABHISHEK MANU SINGHVI:** Falls through. Naturally, it falls through. And frankly, it can
12 fall through even at the last of those stages. We have considered it in the Assembly, but we
13 don't want to pass it again. It happens, My Lords, so many times the Bills are withdrawn. That
14 is the way in which... that's my Point No. 4.

15 Point No. 5, all the judgments cited by Mr. Mehta are not falling through the phrase. They are
16 all followed, 'unless the first Proviso', if My Lord recollect? I hope, My Lords, recollect. I'm
17 saving time. Those two judgments have falling through... falls through unless the first Proviso.
18 It says so.

19 **CHIEF JUSTICE BR GAVAI:** Unless the first Proviso is followed.

20 **ABHISHEK MANU SINGHVI:** That is the meaning which I have given, the first Proviso
21 following is this.

22 **CHIEF JUSTICE BR GAVAI:** Their argument, unfortunately the...

23 **ABHISHEK MANU SINGHVI:** The first step, he says, is an independent step of
24 withholding, no returning back. That's where he makes the break. The short point is, Mr.
25 Mehta makes, according to my respectful and humble submission, an artificial break at
26 keeping it locked in his cupboard and not sending back. Then the 6th reason, My Lords. If
27 my...

1 **CHIEF JUSTICE BR GAVAI:** According to him, if the Governor decides to withhold it or
2 keep it back, then it will automatically fall through.

3 **ABHISHEK MANU SINGHVI:** Then all these steps, the Proviso is not necessary, in fact.
4 Back to the Assembly, Assembly reconsideration, Assembly repassing and sending it back, all
5 this stops at the first stage. That's for, Your Lordships, ultimately, the Constitution is not going
6 to say everything. Otherwise, My Lords, your lawyers would be superfluous and the
7 Constitutional Benches also would be superfluous. Now, My Lords, the next point on the
8 bullet, next.

9 **CHIEF JUSTICE BR GAVAI:** Next. The last one is only, if the Assembly does not pass it for
10 a variety of reasons.

11 **ABHISHEK MANU SINGHVI:** Yeah, in these various forms.

12 **CHIEF JUSTICE BR GAVAI:** Then only it will fall through.

13 **ABHISHEK MANU SINGHVI:** And... no, the last point was that the two cases he sites for
14 'falls through', My Lord, recollects *Kameshwar* and *Valluri*. My Lord, remembers it. My
15 Lord has read it earlier. All say, "falls through"... immediate next five words are, "unless the
16 first Proviso... unless the Proviso", just glance at it for a second, My Lords. Just come to page
17 56 of my note just to refresh Your Lordships' memory. My Lord has seen it. 56, small page 56
18 of my note. That suffix is ignored by my learned friend. My learned friend ignores the suffix.

19 **R. VENKATARAMANI:** What suffix is he talking?

20 **ABHISHEK MANU SINGHVI:** At least, he's interested in my argument, My Lords. Not
21 agreeing, but interested.

22 **CHIEF JUSTICE BR GAVAI:** The Learned Attorney forgot to mute it.

23 **ABHISHEK MANU SINGHVI:** That's correct, My Lord.

24 **CHIEF JUSTICE SINGHVI:** Yeah, he was speaking to himself. Yes.

25 **ABHISHEK MANU SINGHVI:** Saying, what suffix, so it's... assisting Advocate will show
26 him the...

27 **R. VENKATARAMANI:** I'm sorry for the intervention, sir.

1 **ABHISHEK MANU SINGHVI:** Page 56 is the suffix. My Lord sees the fourth line of page
2 56?

3 **CHIEF JUSTICE BR GAVAI:** Yes.

4 **ABHISHEK MANU SINGHVI:** The Bill falls through unless the procedure indicated in the
5 Proviso is followed. If My Lord reads the line, there's no problem. It fits in perfectly. What is
6 the problem? You are creating a problem and then trying to solve it. Now what my learned
7 friend says is falls through, full stop, is the first option he says. Next is returning, passing,
8 consideration, those are other options. My Lord, that's a very...

9 **CHIEF JUSTICE BR GAVAI:** No, he wants to read that. He may declare that he withholds
10 the assent, therefore, in which case the Bill falls through.

11 **ABHISHEK MANU SINGHVI:** That's it.

12 **CHIEF JUSTICE BR GAVAI:** He was using... trying to use the words, unless the procedure
13 indicated in the proviso is followed.

14 **ABHISHEK MANU SINGHVI:** That's right.

15 **CHIEF JUSTICE BR GAVAI:** So, if the procedure... their argument as we understand.

16 **ABHISHEK MANU SINGHVI:** Correct.

17 **CHIEF JUSTICE BR GAVAI:** If the Government... Governor decides to declare it to be
18 withhold, then it also, save and exempt where he decides to follow the Proviso, in that case, it
19 will not fall. So, that happens with their argument. So, the argument that we understand is
20 that there's an absolute power in the Governor.

21 **ABHISHEK MANU SINGHVI:** It's the argument with great respect, their argument has
22 only one merit. It's a simple argument. The word 'falls through', stops. That's Your Lordship's
23 first option. No sending back, no reconsideration, no repassing. Your Lordship remembers
24 that *Kameshwar* was not on this issue at all. It's a descriptive sentence which summarises,
25 *Kameshwar* issue, just give me 30 seconds more, My Lords. At page 55 is a different issue.

26 **CHIEF JUSTICE BR GAVAI:** So, whether a second time reservation is permissible or not.

27 **ABHISHEK MANU SINGHVI:** No. It is, in fact, a different issue... My Lord, whether a Bill
28 is to be granted assent by the Governor to become a Law, first, and then refer.

1 **CHIEF JUSTICE BR GAVAI:** And then send it to the President.

2 **ABHISHEK MANU SINGHVI:** Which is quite, My Lord, bizarre, with respect...

3 **CHIEF JUSTICE BR GAVAI:** The argument held was that unless he grants assent, he can't
4 reserve it for the President's...

5 **ABHISHEK MANU SINGHVI:** You can't send... Your Lordships, the moment Your
6 Lordships grant assent, it becomes a Law. Then what do you refer it to the President for, My
7 Lords? I'll come to the courts then. Then the courts step in. That was the issue. In the course
8 of that, at page 56... I'm sorry. In the context of that at page 56 describing it they say, "Unless
9 the procedure indicated in the Proviso is followed". The short simple answer is at any stage
10 when the Proviso is being followed, it can fall through. The Assembly may not reconsider. The
11 Assembly may not repass. It may not send it back to the Governor. That is the meaning of
12 'unless the procedure indicated in the Proviso is followed'. It completely harmonises, unless
13 you want to create a dichotomy.

14 **CHIEF JUSTICE BR GAVAI:** No, no. Please repeat.

15 **ABHISHEK MANU SINGHVI:** The meaning of falls through when they use it in the
16 descriptive sense in page 56 and 59 respectively in *Kameshwar* and *Valluri* is simple.
17 When the Governor returns it at any point the Bill may fall through unless the procedure of
18 the Proviso is followed, which is the Assembly may not reconsider it. It may not repass it. It
19 may not resend it back to the Governor. That is what it means. It does not mean that the
20 Governor is given by an unknown, unwritten letter, the power to withhold assent simpliciter
21 by locking it in the cupboard. That's 56. Same in *Valluri*, where also the issue didn't arise
22 directly at all. At page 59, just see the same thing. It's completely ignored.

23 The question in *Valluri* was Article 252. But leave that, come to 59, just again, My Lord,
24 harmonise. In both cases, my learned friend stops at the first step. Come to 250... page 59, My
25 Lords, of my note. No. 2. "He may, except in the case of a Money Bill, withhold his assent
26 therefrom, in which case the Bill falls through unless the procedure indicated in the first
27 Proviso is followed i.e., return the Bill to the Assembly for reconsideration with a message".
28 It's a descriptive sentence. The issue is not arising in the independent sense. My Lords, Your
29 Lordship returns the Bill as a Governor. It can still fall through. Falls through many times.

30 Then, My Lords, as I end on this, two more points. The crucial thing is to give a separate
31 independent head of withholding assent and keeping it with himself. Remember, My Lords,
32 withholding assent means neither rejecting, nor assenting, doing nothing. Will, My Lords,

1 overturn on its head the entire Constitutional scheme. That's the most important argument.
 2 Your Lordship is then making it a super Legislature, a super CM, as far as the Governor is
 3 concerned. It is contrary to the entire scheme of the Constitution we're arguing over the last
 4 so many days. In effect, a withholding assent option is an option simply to keep it in limbo
 5 indefinitely. No time period. Permanently, semi-permanently. It kills the Bill. The Governor
 6 kills the Bill. A killing of the Bill is available only to the Cabinet Government. Nobody else.

7 **CHIEF JUSTICE BR GAVAI:** So, Legislature.

8 **ABHISHEK MANU SINGHVI:** Which is Cabinet is a form of Government. Of course, the
 9 Legislature is the main part. My Lords, the Cabinet is a subset of it. The Cabinet is subset of it,
 10 correct. It can't be a power of killing a Bill, My Lord. The Governor, Your Lordship will have
 11 no scheme of the act left... of the Constitution left. And lastly, My Lords, I'm just picking up on
 12 a sentence which fell from My Lord, Justice Narasimha. It is not very vital to my argument,
 13 but it's just making a last point independently on this, as I end this. My Lords, there is no other
 14 procedure known in the Constitution of this falling through. The only thing known is this
 15 procedure in 200 and a separate procedure of lapse in 196. Unless a Bill lapses, there is no
 16 falling through of a Bill. There is no 3rd, 4th, 5th category called 'falling through.' Lapsing is
 17 196. It's a separate defined procedure. It will lapse and it will dissolve. It will not lapse and it
 18 will dissolve. It will lapse and will prolong, etc., etc. We're not concerned with that.

19 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Falling through is an expression of a
 20 court, not an expression of the Constitution.

21 **ABHISHEK MANU SINGHVI:** That's my case.

22 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** We even interpret it on the basis of
 23 either *Valluri* or...

24 **ABHISHEK MANU SINGHVI:** No, My Lord, I am saying... My learned friend's entire
 25 argument is based on those four lines. My Lords, that's my argument with respect.

26 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** You both are taking two extreme
 27 stands.

28 **ABHISHEK MANU SINGHVI:** Very well. Now, My Lords, I leave that and come to, just
 29 ending this part, at page 61. Just two lines, there is obviously no fifth option which, My Lords,
 30 at my para 39. Page 61, para 39. I have given six, seven reasons for this 'falling through' point.
 31 I've left it now, My Lords. I'm on page 61, para 39. No fifth option, obviously. I'm saying there's

1 no fourth option also, leave aside a fifth option. And the only option clearly given by the
 2 Constitution of discretion, undoubtedly so, is the second Proviso. I end on that, My Lords, on
 3 this point. My Lords, there is a small conclusion. I put at page 61 to 62. Your Lordship will not
 4 spend time reading it. It's the two swords in one scabbard argument I made orally.

5 **CHIEF JUSTICE BR GAVAI:** You already made.

6 **ABHISHEK MANU SINGHVI:** *Ek mayaan mein do talwar* issue. Leave that aside. And I
 7 turn to justiciability, where I'll try to save some time because it is mostly quotations. And My
 8 Lords, I am dealing compositely with four issues: justiciability, judicial review. Your Lordships
 9 doing judicial review means judicial supremacy.

10 **CHIEF JUSTICE BR GAVAI:** Justiciability?

11 **ABHISHEK MANU SINGHVI:** My Lords, questions are 3, 4, 6, and 9. 3, 4, 6, and 9. It
 12 starts at page 63 of my note.

13 **CHIEF JUSTICE BR GAVAI:** 3, 4...?

14 **ABHISHEK MANU SINGHVI:** 3, 4...

15 **CHIEF JUSTICE BR GAVAI:** 6 and 9.

16 **ABHISHEK MANU SINGHVI:** 6 and 9. Compositely, they are, My Lords, judicial review.
 17 My Lords becomes supreme because My Lord does judicial review, justiciability, all are these
 18 four issues. My Lords can glance at the issues again. Three is, is the exercise of 200 justiciable?
 19 Four is... I'm sorry, four is also included. 361 is a bar to Your Lordships' judicial review. That's
 20 question 4.

21 **JUSTICE VIKRAM NATH:** You have mentioned that.

22 **ABHISHEK MANU SINGHVI:** Yes, yes. So I'm just saying, My Lords, they are the
 23 questions. Then, My Lords, 6 is, "Is the exercise of 201 justiciable?" Similar, overlapping. And
 24 then last and interestingly, 9, "Are the decisions of the Governor and the President, under 200
 25 and 201, justiciable at a stage anterior to the Law coming into force? Is it permissible for the
 26 courts to undertake judicial adjudication over the contents of the Bill in any manner before it
 27 becomes law?" And in the submission of Mr. Mehta, he also uses the word, 'judicial
 28 supremacy', otherwise it will be inaugurated, etc. So I'm dealing all compositely. As usual, My
 29 Lords, I've made 6 or 7-point summary, then the quotations will come. So just read the
 30 summary, that's important. That summarises the whole case in two pages. At page 63, para

1 47, this is a summary of the entire case on judicial review. Page 63, para 47, "In respect of
2 Articles 200/201, neither the Governor nor the President involved..."

3 **CHIEF JUSTICE BR GAVAI:** Para? para?

4 **ABHISHEK MANU SINGHVI:** 47, My Lords.

5 **CHIEF JUSTICE BR GAVAI:** 47, yes.

6 **ABHISHEK MANU SINGHVI:** At page 63, small page. Big page is 542. May I read, My
7 Lords?

8 **CHIEF JUSTICE BR GAVAI:** Yes.

9 **ABHISHEK MANU SINGHVI:** Some of these are answering, My Lords, Mr. Mehta's
10 submission. Now, he used the word, 'high prerogative'. It's not my word. "In respect of so and
11 so, neither the Governor nor the President enjoy any general high prerogative or plenary
12 power, which is immune from judicial review or justiciability." Why? "In a Constitutional
13 Republic governed by rule of law, judicial review and the supremacy of the Constitution, not
14 the Judiciary, the very concept propounded by the Government in this regard is fundamentally
15 erroneous." This is expanded in paras 55 to 64.

16 "Judicial review has been repeatedly held to be part of the basic structure of the Constitution,
17 is exercised in diverse and multifarious situations. Ouster clauses of different sizes and
18 colours, no-go areas of different use, statutory and Constitutional bars of differing width and
19 amplitude, have repeatedly been rejected by Constitutional Courts as a legitimate ouster of
20 judicial review." Many diverse examples My Lord has, in every year... area, where he has
21 discretion. Here, in most cases, he has no discretion. But where he has discretion, judicial
22 review is never ouster or even, My Lords, in any manner controlled, basic structure. That's 65
23 to 78.

24 "Actions in violation of explicit Constitutional text or in breach of clear Constitutional intent
25 of the founders or at variance with the context of a Constitutional provision or its rationale
26 cannot be immunised from judicial review by recourse to the doctrine of political questions,
27 which is wholly...", my learned friend uses the phrase, it's not my word again, 'high prerogative'
28 and 'political question' is Mr. Mehta's phrase, which I'm answering in para 79 to 85.
29 "Withholding of assent and thereby, supposedly making the Bill fall through, has no
30 connection with and is wholly unrelated to the alleged bar of *quia timet* actions wrongfully
31 applied through the fallacious invocation of **Kihoto**."

1 My Lord, one argument, my learned friend is that **Kihoto** prevents *quia timet* injunctions.
 2 And a falling through means that Your Lordships will be interfering at the interim stage, and
 3 that is barred by **Kihoto**. With greatest humility, it's the most convoluted argument. It has no
 4 application to the case, none. "51. Protective provisions, providing an arc of protection for
 5 several diverse public servants, even in ordinary statutes". Forget 361, My Lords. ..."and
 6 similarly to high personages like the President or the Governor in Articles like 361 in respect
 7 of any act done or purporting to be done by them in the exercise of their powers and duties
 8 have never been interpreted or applied to oust judicial review and justify arguments of lack of
 9 justiciability *qua* the actions and decisions of such persons. They are a well-established old
 10 paradigm for provision of a protective umbrella against personal, civil, and criminal actions
 11 with respect to work done while holding their office."

12 So, My Lord, if I take a decision, Your Lordship quashes the decisions, right, left and centre.
 13 But that doesn't mean that Your Lordships quashes, then I file a second action for tortious
 14 liability against the Governor. C-61 is that, and it's a well-known Common Law exception from
 15 300 years in England, My Lords, which has become 361. Judicial reviews, again, nothing to do
 16 with judicial review, because judicial review hits the decision of the action. 361 bars the
 17 [AUDIO BREAKING] from civil tort contract. It will be totally relevant to the case. I'll cite the
 18 cases coming in... yes. The provision in US is on 361 is much narrower. But barring the last
 19 step, it has been interpreted by US Supreme Court to mean, the US President can grant
 20 pardons to anyone, and now supposedly to himself also.

21 **CHIEF JUSTICE BR GAVAI:** Now?

22 **ABHISHEK MANU SINGHVI:** Now supposedly to himself also. That last part is not
 23 decided, but it is likely that it is so going to be held. Anyway, let's go on, My Lords. "The
 24 fundamental fallacy of the Union of India's averments on the alleged non-justiciability of a
 25 Governor's, President's actions under 200, 201 is that they proceed on the flawed assumption
 26 that the Governor exercise high prerogative, and plenary power". This is Mr. Mehta's
 27 submission in 281. Wrong. Completely decided cases say it is wrong. And then, My Lords,
 28 discretionary powers, I've already said. Now let's go to 47. The first para was 47. I'm
 29 elaborating it from 55. "Neither the Governor nor the President enjoy any high prerogative or
 30 plenary power, immune". My Lord, this is found in para 55 of my note at page 281 of his
 31 submissions. Ignore it, My Lords. Just note the reference. Ignore 56 also. Come to 57. My
 32 Lords, this is a slightly different, but related topic. I'm getting out of the way in the beginning.
 33 This is not that. Here I am showing that Governor exercises no Legislative powers. It's well
 34 decided. He is part of a Legislative process. He exercises no Legislative powers. That's a very

1 important distinction. The impression given to Your Lordship is because he's part of a
2 Legislative process, therefore, he also exercises some Legislative powers.

3 **CHIEF JUSTICE BR GAVAI:** Condition is not that the... the condition is that he is also a
4 part of the Legislature. The Legislature consists... no, that's their argument.

5 **ABHISHEK MANU SINGHVI:** My Lords... correct, correct.

6 **CHIEF JUSTICE BR GAVAI:** That in a Bicameral House, the Legislature consists of the
7 two Houses and the Governor. And in Unicameral...

8 **ABHISHEK MANU SINGHVI:** Absolutely.

9 **CHIEF JUSTICE BR GAVAI:** ...the Legislative Assembly and the Governor.

10 **ABHISHEK MANU SINGHVI:** My Lords, to the extent that obviously when he received
11 the Bill, gives an assent before which it doesn't become an Act, he's part of a Legislative
12 process. Therefore, the Legislature consists of one House plus second House plus Governor's
13 assent. To that extent, I have no problem. But to add to that, that he exercises indirectly by
14 virtue of the first point, any Legislative function or power is Constitutionally fallacious. That's
15 what I'm showing. It's a nuance, a very clear nuance. *Nabam Rebia* decided it beyond doubt.

16 **CHIEF JUSTICE BR GAVAI:** No. According to you, his powers are restricted by whatever
17 is specified in 201?

18 **ABHISHEK MANU SINGHVI:** 200 and 201, that's the answer. So, My Lords, you had to
19 put 200 because there is one House...

20 **CHIEF JUSTICE BR GAVAI:** Or whatever options are available to him under 200.

21 **ABHISHEK MANU SINGHVI:** ...or 201 as the case maybe.

22 **CHIEF JUSTICE BR GAVAI:** Or 201, yeah.

23 **ABHISHEK MANU SINGHVI:** He is the, My Lords, mover of the Bill. The mover of the
24 Bill comes to the Assembly. One House, it goes to the Upper House, where it exists, goes to the
25 Governor. Nothing becomes Law till the three steps are over. He's part of the Legislature.
26 That's it. That does not mean that he can either kill a Bill, he can decide that the Bill is a threat
27 to national security, to foreign policy, to economic policy of India, that there is any extra power
28 than what 200 gives. That's all I'm saying. Now *Nabam Rebia* clarified this. Come to

Nabam Rebha in para 57 of my submissions, Constitution benches, Your Lordship knows. My Lords, there may be a typo there. That para is 147.2. It's correct, I think in Your Lordship's...

CHIEF JUSTICE BR GAVAI: 147.2.

ABHISHEK MANU SINGHVI: "Even though Article 168 postulates the Legislature of a State would comprise of the Governor, yet the Governor is not assigned any Legislative responsibility in any House of the State Legislature. The only function vested with the Governor is expressed through 200", is what My Lord, the Chief Justice observed just now. "...which *inter alia* provides that a Bill passed by the State Legislature is to be presented to the Governor for his assent. And its ancillary provision, namely 201, wherein a Bill passed by the State Legislature and presented to the Governor may be reserved by the Governor for consideration by the President. The only exception to the non-participation of the Governor in Legislative functions is the ordinance making power, 213. The Governor under 213 can promulgate ordinances during the period when the House is not in session. This function is exercised by the Governor undisputedly on the aid and advice of the Council with the Chief Minister as the head." Then mark, Justice Khehar uses this phrase again and again, My Lords. "All in all, it is apparent that the Governor is not assigned any significant role even in the Legislative functioning."

Then 148. "The above position leaves no room for doubt that the Governor cannot be seen to have such powers and functions as would assign to him a dominating position over the State Executive and the State Legislature." This Your Lordships saw earlier. See the bottom of that page. "According to the Respondents, it makes the Governor's orders based on his own discretion, immune from judicial review." Same argument. "Accepting the above position will convert the Governor into an all-pervading super Constitutional authority", what I call a super CM or a super Legislature. "This position is not acceptable because an examination of the Executive and Legislative function of the Governor from the surrounding provision of the Constitution clearly brings out that the Governor has not been assigned any significant role either in the executive...", which we are arguing, "...or the Legislative functioning of the State."

Then, My Lords, this is the question which came last time also. It's directly answered by me orally. Now, I'm putting it in writing here, My Lords, in this para, that is para 58. In para 286 of his submissions, and I have serious objection to many of these paras because they turn the Constitutional scheme on its head completely. 286, for example, says that, "The Governor has decision-making functions and has to consider questions of repugnancy or violation of Constitutional Fundamental Rights is *ex facie* erroneous. Stated briefly, the tests of

1 Constitutional validity, repugnancy are to be tested by the judiciary under Articles 32 or 226
 2 under judicial review. The Governor does not possess any powers to conduct such an
 3 examination of the Bills duly passed by the Assembly. Save and except, as per the second
 4 alternative argument, that he can either send the Bill back or refer it to the President". That's
 5 a different matter, My Lords. You can't judge it. You can't judge it. He cannot conduct a *de*
 6 *facto* judicial examination or adjudication and hold back assent indefinitely on his own
 7 perceived view about the alleged unconstitutionality of any Bill." Then, My Lords, come to 66.
 8 "The suggestion is...

9 **CHIEF JUSTICE BR GAVAI:** 66?

10 **ABHISHEK MANU SINGHVI:** Yes. 65 is a repetition of *Nabam Rebia*, is again the same
 11 thing. 66 now. I'm sorry. No, my apologies. Sorry, 60. My mistake. I read 59. 60. "It is equally
 12 wrong to suggest that because the inaction of a Governor or exercise of non-existent power
 13 under 200 would be subject to judicial review, even grant of assent by the Governor." One
 14 argument made is, that if you are doing judicial review of withholding and all this, then even
 15 the assent can be subject to judicial review, and that too by a private party. Specific argument
 16 in para 290 of the SG's submission. Now my answer to that. "A private party can challenge a
 17 statute only on the Constitutional validity of a statute or a lack of competence in its passage.
 18 The challenge would not be based on allegations requiring examination of the assent granted
 19 by the Governor." My Lords, these are all created controversies with greatest respect. They are
 20 very well established for 75 years of our Republic, My Lords. In other words, "Any Bill is
 21 challengeable by any such private party only when becomes an Act of Parliament or State
 22 Legislature". I come to Your Lordships many times before the Act. Your Lordship says, Bill, go
 23 back. Happens all the time.

24 "After this happens, the challenges on the usual Constitutional grounds, ranging from alleged
 25 lack of Legislative competence to a whole range of Constitutional invalidity allegedly arising
 26 from diverse provisions like 14, 19, 21, 300(a)." These are what we do before My Lords. "None
 27 of this involves or can involve a challenge to the Governor's or President's decision to grant
 28 assent." It has never happened. "In none of such situations is it necessary or conceivably that
 29 the private party will challenge or needs to challenge the factum of assent or why the
 30 Governor/President gave assent." This is a completely, My Lords, erroneous argument. "Such
 31 issues are completely irrelevant, and have been erroneously conflated in the Written
 32 Submissions. Equally fallacious is the...", now I turn to prerogative power, My Lords.
 33 Prerogative power is mentioned in 280, 81 of his submissions. This is again, My Lords,
 34 conflating it with the royalty. Your Lordships have said, in Republic of India, there's no such
 35 thing. We are a Republic governed by the Constitution. "A Republican Constitutional system

with a dynamic written Constitution is antithetical to any concept of prerogative powers in any authority, unless, in the rarest of rare cases, a specific Constitutional provision consciously and specially chooses to invest that authority." That's not prerogative, that's Constitutional power.

CHIEF JUSTICE BR GAVAI: Like 356?

ABHISHEK MANU SINGHVI: Like 356, exactly, and other, My Lords. "The decision of this..." and My Lords, the interesting thing I'm coming in this. 356 clearly gives you discretion, so does 362 and those, My Lords, provisions of pardon. 200 is where you have no discretion. Even in 356...

CHIEF JUSTICE BR GAVAI: So, you have a discretion. You can make choices between whatever the options given under 200, either to withhold or to give assent or to reserve it for the...

ABHISHEK MANU SINGHVI: It is a Constitutionally given option. Discretion within each option is not available. Now in the Articles where discretion is available, 356, 362, 372, 371. Even there, Your Lordships has done full judicial review. My learned friend is saying there is no judicial review where discretion is absent. In Articles with wide discretionary zones, My Lord has done vigorous, full, comprehensive judicial review. That's the story, Your Lordships, I'm coming to now in a minute. But first, see this prerogative, this is only on the prerogative. The next question is, "Whether this court should adopt the rule of construction accepted by the Privy Council." This is 67 judgment, My Lords. "There are many reasons why the said rule of construction is inconsistent and incongruent in the present setup. We have no Crown. The archaic rule based on the prerogative and perfection of the Crown has no relevance to Democratic Republic. It is inconsistent with the rule of law based on the Doctrine of Equality. It introduces conflicts and discrimination." And my learned friend raises it directly in 280, 81 of his submissions. Then come to the next page. Are you sure? Just check it. My Lords, I forgot to write there. I'm told this is nine judges. Just check it. My fault.

CHIEF JUSTICE BR GAVAI: Which one?

ABHISHEK MANU SINGHVI: This, My Lords, Superintendent [UNCLEAR]... nine judges. I should have written it there, My Lords. Kindly write it there. That combination is rare now, My Lords, in 367... 67. Now, My Lords, come to the next page. 24, page 69. Small page, para 24. "There is therefore no justification for this court to accept the English canon of construction, for it brings about diverse results and conflicting decisions. On the other hand, the normal construction, namely the General Act applies to citizens as well as a State, unless

1 it expressly or by necessary implication exempts the State from its operation, steers clear of all
 2 anomalies. It *prima facie* applies to all States and subjects, a construction consistent with the
 3 philosophy of equality. In our Constitution, this natural approach avoids the archaic rule and
 4 moves with the modern trends. This will not cause any hardship to the State. The State can
 5 make an Act if it chooses, providing for its exemption from its operation." Last sentence is
 6 important, My Lords, because prerogative was used to exempt yourself. Now this statute will
 7 exempt it if you want to. Next page, 70. "We, therefore, hold that the said canon of construction
 8 was not the law in force within the meaning of 372. In any event, having regard to the foregoing
 9 reasons, the said canon of construction should not be applied for construing statutes in India."
 10 Namely, My Lord, exemptions drawn from the prerogative power. That was the issue in that
 11 case. Followed, My Lords in [UNCLEAR] **Ravi Chandra**.

12 **CHIEF JUSTICE BR GAVAI:** This was by how many judges?

13 **ABHISHEK MANU SINGHVI:** Yes, My Lord.

14 **CHIEF JUSTICE BR GAVAI:** **Ravi Chandra** was how many judges?

15 **ABHISHEK MANU SINGHVI:** Division Bench. **Ravi Chandra** is Division Bench. And it
 16 specifically follows, My Lords, this nine-judge bench. Just see the bold face, "Governments,
 17 taking a cue from the English experience, initially asserted they are not subject to the law,
 18 insisting upon the continuation of the royal prerogative by virtue of Article 372, which enabled
 19 the Crown in the UK to assert its right to insist that it was not bound by the law unless there
 20 was express statutory intent. Mercifully, a later judgment overruled that understanding." Very
 21 pithily put, My Lords. Then, they have quoted mercifully that judgment on the next page. I'll
 22 not read it, the same judgment.

23 Come to the lower part, My Lords, para 65. Now, in 65 onwards, I'm elaborating 42 and 52,
 24 where the proposition was, "Judicial review has been repeatedly held to be part of the basic
 25 structure." Because these four issues are dealing with Judicial Review, Your Lordships has
 26 gone very far. My learned friend is talking of non-discretionary power not being amenable to
 27 Judicial Review. I'm going to show Your Lordships other extreme of reality. "It is not in any
 28 manner...", so, it is part repeatedly of the basic structure. "It is not in any manner synonymous
 29 with or intended to result in the supremacy of the Judiciary." That's a very, My Lords,
 30 erroneous submission. "Judicial Review has been repeatedly held to be part of the basic
 31 structure in multifarious situations". And the best is, My Lords, when Your Lordship has tried
 32 to oust or attenuate judicial review. In different views and colours, in different situations, My
 33 Lords, have had those experiences.

1 And what have My Lords said. 66. "Judicial Review is not in any manner synonymous with or
 2 intended to result in the supremacy. The judiciary..." My Lords... "is the designated organ as
 3 the interpreter of the Constitution and the job is to ensure the supremacy of the Constitution
 4 through judicial review." Your Lordship is a designated organ. Your Lordships can't help it.
 5 You have no option. If you are the designated organ to decide the supremacy, not of the
 6 Judiciary, but of the Constitution, then you are doing that job and not making the Judiciary
 7 supremacy supreme. Now, this is the approach when Your Lordships tries to even attenuate
 8 judicial review. This judgment is seven judges, para 68. My Lord may not find that because it
 9 was added later on by me, seven Judges. That is, My Lords, "Power, privileges, immunities of
 10 State Legislatures" at para 68. This is seven judges.

11 And My Lords, Chief Justice Gajendragadkar says, "The supremacy of the Constitution is the
 12 correct phrase, not the supremacy of the Judiciary." The fact that you are the interpreter does
 13 make you supreme. That's a different matter. "This supremacy of the Constitution is protected
 14 by the authority of an independent judicial body to act as an interpreter of a scheme of
 15 distribution of powers." Then, My Lords, ***State of Rajasthan***, was a letter saying the State
 16 Government should go, seven judges in ***State of Rajasthan***. And these are all examples
 17 where discretion is available. Discretion is given. And yet, look at the judicial review. 150, page
 18 73, larger page 552. "But one thing is certain that if the satisfaction is *mala fide* or is based on
 19 wholly extraneous and irrelevant grounds, the Court would have jurisdiction to examine it,
 20 because in that case, there'd be no satisfaction of the President in regard to the matter which
 21 he is required to be satisfied. The satisfaction of the President is a condition precedent of the
 22 exercise of power under 356". Of course by reason of Clause 5...", look at this My Lords. "The
 23 satisfaction of the President is final and conclusive, and cannot be assailed on any ground. But
 24 this immunity from attack cannot apply where the challenge is not that the satisfaction is
 25 improper or unjustified, but that there is no satisfaction at all. In such a case, it is not the
 26 satisfaction arrived at by the President which is challenged, but the existence of the satisfaction
 27 itself." End of that page, "Where it is possible, the existence of satisfaction has always been
 28 challenged on the ground, not *mala fide* alone, based on extraneous and irrelevant grounds."
 29 My Lords, enough techniques and tricks have been tried. Your Lordships have found enough
 30 language to get around it.

31 Now see this ***Bommai***. Now, the first one is nine judges, of course. First, this is what I'm
 32 reading, para 96 is by Justice Sawant and Justice Kuldip Singh. "The Constitution is essentially
 33 a political document, and provisions such as 356 have a potentiality to unsettle and subvert
 34 the entire Constitutional scheme."

I'm, My Lords, reading only the bold parts. It's enough. Don't think that I'm avoiding anything. It's just that it's enough, I think. "Democracy and Federalism are the essential features of our Constitution and are part of its basic structure. Any interpretation that we place on 356 must, therefore, help to preserve and not subvert that fabric." Now, next page is important. Page 75. "So long as the States are not mere administrative units, but in their own right, Constitutional potentates with the same paraphernalia as the Union, and with independent Legislature and the Executive constituted by the same process as the Union, whatever the bias in favour of the Centre, it cannot be argued that merely because and assuming it is correct..." This is the correct point, My Lords. "The Constitution is labelled unitary or quasi-federal or a mixture of federal unitary. The President has unrestricted power of issuing a proclamation under 356." Then, My Lords, this 256 para is by Justice Ramaswamy. Some of these things are missing in the submissions, My Lords. "Judicial review is a basic feature of the Constitution. This Court and High Courts have Constitutional duty and responsibility to exercise judicial review as the sentinel on the *qui vive*."

Next page. "However, justiciability of the decision taken by the President is one of exercise of the Power by the Court, hedged by self-imposed judicial restraint. It is a cardinal principle of our Constitution that no one, however lofty, can claim to be the sole judge of the power given under the Constitution. This Court as a final arbiter in interpreting the Constitution, declares what the Law is. Higher judiciary has been assigned a delicate task to determine what powers the Constitution has conferred on each branch of the Government, and whether the action of that branch transgress. It is the duty and responsibility of this Court and the High Courts to lay down the Law." That's why Your Lordship is called supreme and that is the supremacy of the Constitution you are upholding.

"It is the Constitutional duty to uphold the Constitutional values and to enforce the Constitutional limitations. The judicial review therefore, extends to examine the Constitutionality of the proclamation issued under 356." And we are dealing fully with justiciability. When Your Lordship finds that Your Lordships is doing in the act of doing judicial review, some question I ask is not capable of, Your Lordship, same phrase, really different species, judicially-manageable standards. Your Lordships cannot go into. Your Lordships takes your hands away. "Justiciability is not a legal concept with a fixed content, nor is it susceptible of scientific verification. Its use is a result of many pressures of variegated reasons. Justiciably, we looked at from the point of view of common sense limitation. Judicial review may be avoided on questions of purely political nature. Though pure legal questions, camouflaged by political questions, are always justiciable, the Courts must have judicially-manageable standards to decide a particular controversy." The next four lines may also be underlined, My Lords. I've not underlined it. "Justiciability on a subjective satisfaction

1 conferred in the widest terms to the political coordinate Executive branch, created by the
 2 Constitutional scheme, itself is one of the considerations to be kept in view and exercised in
 3 judicial review". There is, of course, the initial presumption. Then, My Lords, 372 is Justice
 4 Jeevan Reddy's author, Justice Agarwal with him, My Lords. Justice...

5 **CHIEF JUSTICE BR GAVAI:** Next line would also be relevant.

6 **ABHISHEK MANU SINGHVI:** "There is an initial presumption, the acts are..." I said so,
 7 My Lord, "...initial presumption that the acts are regularly performed, always". You start with
 8 the initial...

9 **CHIEF JUSTICE BR GAVAI:** You start with the presumption.

10 **ABHISHEK MANU SINGHVI:** You always start.

11 **CHIEF JUSTICE BR GAVAI:** And then...

12 **ABHISHEK MANU SINGHVI:** You can't straightaway say that this is on the face of the
 13 Governor.

14 **CHIEF JUSTICE BR GAVAI:** The person who challenges that...

15 **ABHISHEK MANU SINGHVI:** Absolutely.

16 **CHIEF JUSTICE BR GAVAI:** ... to revert it, yes.

17 **ABHISHEK MANU SINGHVI:** There is no problem.

18 **CHIEF JUSTICE BR GAVAI:** Unless there is a strong material, the Court will always
 19 presume in favour of...

20 **ABHISHEK MANU SINGHVI:** The challenger has to overcome the presumption. After he
 21 has broadly overcome it in a the *prima facie* stage, it shifts to him. Your Lordship asks him the
 22 questions. It shifts back to me, My Lords, in case, I'm not able to answer the question.
 23 Absolutely, My Lord. Your Lordship does it every day. Now, My Lords, this is Justice Jeevan
 24 Reddy and Justice Agarwal, starting from 372. Come to the next page, para 373. I have quoted
 25 more because I want to, My Lords, not suggest that I'm not quoting the entire thing. Para 373.
 26 "Whenever a proclamation under 356 is questioned, the Court will no doubt start with the
 27 presumption that was validly issued, but it will not..." This is My Lord, Chief Justice's query
 28 just now. "It should not hesitate to interfere with the invalidity or unconstitutionality of the

1 proclamation is clearly made out." It should not hesitate to interfere. "Refusal to interfere in
2 such a case...", very strong words, My Lords. "... would amount to abdication of the duty cast
3 upon the Supreme Court and the High Courts by the Constitution."

4 Then, My Lords, the Judges give the grounds. They cite a lot of case laws. And Your Lordship
5 knows otherwise. I have quoted three sets of judges in **Bommai**. I've quoted three sets of
6 different judges, My Lords. They are all... there are many more paras. This is not intended to
7 be exhaustive. It's a very long judgment, My Lords. Now I come to...

8 Then, My Lords, 71 para. This is, My Lords, judicially-manageable standards. Now I'm asking
9 myself a simple question, commonsensical. My Lord finds... page 80, small page 80. Small
10 page 80, para 71. Now, My Lords, this is judicially-manageable standards, one part of it. You
11 forget, My Lords the case for 30 seconds. Your Lordship, let us say finds that the Governor is
12 wrong in exercising, withholding assent or indefinitely for 1400 days, 2000 days, keeping back
13 a Bill. Suppose Your Lordships so finds. What is the unmanageable judicial standard in this is
14 what I ask myself? If My Lord does not give the full remedy till the last, then it's only a
15 formality. It's only a superficial application. What is so impossible of judicial management?
16 Your Lordship manages much more in judicial management and judicial review. Much, much
17 more. Here you have the text of the Constitution to guide you, so judicial manageable, I am
18 only answering because my learned friend raised it. I think, it doesn't arise at all. I'm only
19 answering because he raised it.

20 **A K Kaul**. My Lords, just come to the bottom of page 80. "Since the task of interpreting the
21 provision of the Constitution is entrusted to Judiciary, it is vested with the power to test the
22 validity of an action of every authority functioning under the Constitution on the touchstone
23 of the Constitution in order to ensure that the authority exercising the power does not
24 transgress the limitation by the Constitution on exercise of that power. This power of judicial
25 review is therefore implicit in a written Constitution unless expressly excluded by a provision
26 of the Constitution." So, it's the other way around. "Unless expressly excluded by a provision
27 of the Constitution. The power of judicial review is available..."

28 **CHIEF JUSTICE BR GAVAI**: But you know such an exclusion is also held to be...

29 **ABHISHEK MANU SINGHVI**: Correct.

30 **CHIEF JUSTICE BR GAVAI**: ...violating the basic structure of the...

31 **ABHISHEK MANU SINGHVI**: No. My Lord attenuates it. For example, Atomic Energy
32 Plant. My Lord, sometimes in a statute, it happens in a statute, attenuates it that no natural

1 justice is required, no hearing because it's an atomic energy, some sensitive war plant. I mean,
 2 those are very rare cases. In a war or in some military installation. Nobody's arguing that kind
 3 of case. You are arguing that this is... My Lords, these are all answers to arguments. There are
 4 four arguments. Judicial review is minimal. It is not justiciable. There are no judicially-
 5 manageable standards. It is a political question. It's a high prerogative power. All this is set for
 6 200 and 201, My Lords. What is the texture and the textual feel of 200 and 201, if Your
 7 Lordship has a thicket of these objections, one after the other. The only intention is don't go
 8 to the real issue.

9 "Justiciability relates to a particular field falling within the purview." So Your Lordships is
 10 right. In a particular judicial review you have, but you'll not do it in an atomic energy, national
 11 security, war situation. That's obvious common sense, My Lords. It's a common sense. And I
 12 don't think the courts have 99% messed up on that account. The courts are wise enough to
 13 know the feel. We know the difference immediately where Your Lordships have a no-go area
 14 and where there is no problem. It's a self-imposed limitation. It's completely self-imposed.
 15 There are one or two aberrations, My Lord always finds. That doesn't make the rule, My Lords.
 16 My Lord knows of the aberration of a platform in My Lord's home state in Allahabad, where a
 17 judicial order...

18 **CHIEF JUSTICE BR GAVAI:** Don't cite individual cases. Otherwise, he is going to start
 19 from 1952.

20 **ABHISHEK MANU SINGHVI:** "On account of want of judicially-manageable standards,
 21 there may be matters which are not susceptible to the judicial process." That's Your Lordship's
 22 own, what is known as nuancing. Then, My Lords, just I'm not reading it. Para 72 of mines
 23 quotes... mentions **Rameshwar** which fully endorsed **Bommai**. That's another five-judge
 24 bench endorsing a seven-judge bench, with those... on that point. Now, My Lords, there is a
 25 little overlap. I must read the next page of **Rameshwar**, which deals with personal immunity.
 26 But note, that 361 is not the subject here. But **Rameshwar** comes here, it deals with 361, but
 27 I'm not dealing with 361 yet. It's coming later. But I'll read **Rameshwar**, it's important on
 28 judicial review. 361 is coming shortly, though **Rameshwar** here also deals with 361. "We are
 29 unable to accept the contention urged by Learned Attorney General, Solicitor General,
 30 Additional Solicitor General, appearing for the Government, that the report of the Governor
 31 itself is the material, and that it is not permissible within the scope of judicial review to go into
 32 the material on which the report of the Governor may be based, and the question whether the
 33 same was duly verified by the Governor or not. This Court cannot remain a silent spectator
 34 watching the subversion of the Constitution. It is remembered that this Court is the sentinel
 35 on the *qui vive*". This is what the **Bommai** said. Next page. Next page. Page 83, para 73. "A

1 plain reading of the aforesaid article shows..." After that the bold face, My Lords. The bold
 2 face. They give an example in judicial review. "The personal immunity from answerability
 3 provided in 361 does not bar the challenge that may be made to their actions." It's very simple,
 4 My Lords. "Under law, such actions, including those actions where the challenge may be based
 5 on the allegations of *mala fide* are required to be defended by the Union of India or the State
 6 as the case maybe." I'll come to that in a minute, My Lords.

7 "Even in cases where personal *mala fides* are alleged and established, it would not be open to
 8 the Governments to urge that the same cannot be satisfactorily answered because of the
 9 immunity granted. In such an eventuality, it is for the Respondent defending the action to
 10 satisfy the Court either on the basis of the material on record or even filing the Affidavit of the
 11 person against whom such allegation is made. 361 does not bar filing of an Affidavit if one
 12 wants to file on its own." And that's done in many cases, in many cases. "The bar is only against
 13 the power of the Court to issue notice of making the President or the Governor answerable. In
 14 view of the bar, the Court cannot issue direction to the President filing, etc." I'll just pause here
 15 for one conceptual diversion for 30 seconds, My Lords.

16 In one sentence, it completely harmonises. Ex the President or the Governor takes a decision,
 17 why? Number 1, the decision 'why' can be challenged on all available judicial review grounds.
 18 I don't need to recount them. Number 2, that challenge includes a *mala fide* challenge to the
 19 decision. Number 3, neither of these challenges by me to Legislative competence decision
 20 [UNCLEAR] 19, 14 allows me to personally sue the President or the Governor, give me
 21 damages because you made a wrong decision. Give me penal damages because you made a
 22 wrong decision. Number 4, even in *mala fides* of that decision, the Government of the day, the
 23 Secretary files an Affidavit. It doesn't mean that because the Governor is immunised from
 24 filing for his personal immunity, that *mala fide* decision will go, My Lords, unchecked,
 25 unsupervised. So, what's the disharmony? The disharmony is what you deliberately have
 26 created because you want to avoid scrutiny. It's as simple as that.

27 Now, come to next page, 84. "The controlling factor in determining whether the exercise of
 28 prerogative power is subject to judicial review.... whether the exercise of prerogative power is
 29 subject to judicial review, is not its source, but its subject matter." This is the point. Very well
 30 put, My Lords. "It can no longer be said that the prerogative power is *ipso facto* immune from
 31 judicial review." So, source doesn't matter, the decision matters. Bottom of that same page,
 32 "Rule of Law Principle comprises the Government according to law. The ethos of the
 33 Government according to law requires a prerogative to be exercised in a manner which is
 34 consistent with the basic principle of fairness and certainty." Now, My Lords, comes to page
 35 85, para 47. Clearly, Your Lordship has a discretion with the President and Governor for

pardons. Nobody disputes that. In 200, you have no such discretion except second proviso. But in pardons, look at the judicial review Your Lordship exercises, wholesale. "The power under 72 and 161, which is the respective powers, is of the widest amplitude, and envisages myriad kinds and categories of cases with facts and situations. The exercise of power depends upon the facts and circumstances of each case, and the necessity or justification to exercise that power has to be judged from case to case. Important to bear in mind that every aspect of exercise of power under 72 as also 161 does not follow in the judicial domain. In certain cases, a particular aspect may not be justiciable. However, even in such cases, there has to exist requisite material on the basis of which the power is exercised as the case may be. In such circumstances, one cannot draw the guidelines."

See the next para, My Lords. Next para. "As stated above, exercise or non-exercise of power of pardon by Government is not immune from judicial review. Though the circumstance and the criteria to guide exercise of this power may be infinite, one principle is definite, and admits of no doubt, namely that the impugned decision must indicate exercise of the power by application of manageable standards. And in such case, Courts will not interfere in supervisory jurisdiction. By manageable standards, we mean standards expected in a functional democracy. A pardon obtained by fraud or granted by mistake or granted for improper reasons would invite judicial review". I think, I made an error not underlining that. Your Lordship may kindly underline that.

CHIEF JUSTICE BR GAVAI: That is already in bold.

ABHISHEK MANU SINGHVI: It's in... very well. "The prerogative power is a flexible power, it should be adjudged, etc." Then next page, My Lords. "In conclusion, it may be stated that there is a clear symmetry between the Constitutional rationale for review of statutory and prerogative power." Four lines later. "The exercise of prerogative power cannot be placed in straitjacket formula. Regarding the extent and amplitude, the power is bound to vary. When the impugned decision does not indicate any data or manageable standard, decision amounts to derogation." My Lords, prerogative was most used for pardon. Because when the pardon power came in 72 and 161, they said, it goes back to the royal power to pardon, etc. So that is what is being debunked here. Then, My Lords, of course, the be-all and so... most famous, My Lords, **Kesavananda**, just two paras, Justice Shelat and Grover. "The Constitution being supreme, all the organs and bodies owe their existence to it. None can claim superiority over the other, and each of them has to function within the four corners of Constitutional provisions." This I am doing on judicial supremacy. My Lord has become supreme. He has arrogated the power. It is excessive judicial, those kind of arguments. You are, My Lords, implementing the supreme document.

1 Next page. "The Constitution has all the essential elements of a federal structure, as was the
 2 case in the Government of India Act '35. The essence of federalism being the distribution of
 3 powers within the Federation of the Union of States. All Legislatures have plenary powers, but
 4 these are controlled by the basic concepts of the Constitution itself." Then I'll skip that, My
 5 Lords. Just come to judicial supremacy at the bottom of page 88, para 577. This is direct on
 6 judicial supremacy. My learned friend's Written Submissions raises, My Lords, I submit the
 7 red herring of judicial supremacy. "We are unable to see how the power of judicial review
 8 makes the Judiciary supreme in any sense of the word. This power is of paramount importance
 9 in a Federal Constitution." My Lord, when **Kesavananda** has said so, where else do we need
 10 to go, My Lords? For judicial supremacy, My Lords, this is the best answer.

11 See the next page 89, "Judicial review is undertaken by the Courts, not out of any desire to tilt
 12 at Legislative authority in a crusader spirit, but in discharge of a duty plainly laid upon them
 13 by the Constitution." Then, My Lords, bottom of that page. "There is ample evidence in the
 14 Constitution itself to indicate that it creates a system of checks and balances by reason of which
 15 powers are so distributed that none of the three organs it sets up, can become so predominant,
 16 so as to disable the others from exercising and discharging powers. Though the Constitution
 17 does not lay down the principle of separation, in all its rigidity, as is the case, yet it envisages
 18 such a separation. The judicial review, expressly provided by means of 226 and 32, is one of
 19 the features upon which hinges the system of checks and balances."

20 Next page answers the supremacy argument. Page 90. "The function of interpretation of our
 21 Constitution being thus assigned to the judicial power of the State, the question as a subject of
 22 law is in the ambit of one or more powers Legislature conferred by the Constitution, would
 23 always be a question of interpretation of the Constitution." Then, My Lords, at page 91, Justice
 24 Jaganmohan Reddy was faced with the argument, political question, no judicial review, less
 25 judicial review. He answers is thus, page 91. "There is no..." My Lords, in one sense, "There is
 26 no constitutional matter, which in some way or the other, does not involve political, social, or
 27 economic questions". Otherwise, Your Lordships would not be dealing with the Constitution.
 28 Your Lordships would be dealing with some petty statute. "And if the Constitution makers
 29 have vested in this Court a power of judicial review, and while so vesting, have given it a
 30 prominent place, describing it as the heart and soul of the Constitution, we will not be deterred
 31 from discharging that duty merely because the validity or otherwise of the Legislative will
 32 affect political or social policy underlying it." And then the next underlined portion is also
 33 important. I'm not reading it, My Lords.

34 **Minerva**, which was the main judgment, My Lords, on the direct point after **Kesavananda**,
 35 page 92. Page 92. "But then the question arises as to which authority must decide what are the

limits of the power conferred upon each organ and whether such limits are transgressed or exceeded". So, who will do it? Your Lordship will do it. So, Your Lordship will have to face the charge of being supreme because you are the last one on interpretation. 93, My Lords. 93. "It is a solemn duty of the Judiciary under the Constitution to keep the different organs such as Executive and the Legislative in the limits of the powers conferred." That's another job, My Lords, which makes you supreme. You must keep them within the limits.

The power of judicial review is conferred on the Judiciary under 32 and 226. "If I was asked to name..." this is the famous Dr. Ambedkar lines, My Lords. "If I was asked to name any particular Article of this Constitution as the most important, an Article without which this Constitution would be a nullity. I would not refer to any other Article except this one." That's 32, My Lords. "It's a very soul of the Constitution, the very heart of it. I'm glad that the House has realised it's important." This is Your Lordships' first entry into judicial review. This is Your Lordships' first entry into judicial review. High Court's first entry is 226. Together, you make up the judicial review, My Lords, calculus. And I will be dealing with my learned friend's 32 argument, which took one and half hours, My Lords, on the last day when I was to open in the morning. I'll deal with that briefly.

CHIEF JUSTICE BR GAVAI: Whether the State is entitled to?

ABHISHEK MANU SINGHVI: Yes. Actually, My Lords, I'll show there, the issue is not referred to Your Lordships at all. The issue is some other issue. Article 131 is the question the President asked. Article 32 is the question Mr. Mehta is asking. But that apart, I'll deal with whether... why the State can't go. Mr. Mehta has reformulated his own additional question under that question. It's only a 131 question, My Lords, And in 131, he concedes that the State suing... My Lords, the state filing against the Governor is not an interstate and is not Centre. He concedes that, and then formulates an additional issue that you can't file a 32, which the President never asked you. I am going to argue that Your Lordships should refuse to answer that question, but I'll otherwise satisfy My Lords. Next, My Lords, page 93. 93. "The Judiciary is the interpreter of the Constitution. The Judiciary is assigned the delicate task to determine what is the power conferred on each branch of Government, whether it is limited and if so, what are the limits and whether any actions that transgresses such limits. It is for the Judiciary to uphold the Constitutional values and to enforce the Constitutional limitations".

94. "The power of judicial review is an integral part of our Constitutional system. Without it, there'll be no Government of laws and the rule of law would become a teasing illusion and a promise of unreality." This is what I come into Your Lordships as we near the end of judicial review shortly. Then, My Lords, para 77, page 95. Another argument raised was repeatedly,

destabilises the Constitutional balance. That's the third line of 77. My Lord, this is too general. The answer has to be general. My answer is the last four lines. "If this argument is accepted that the Governor and President would be insulated from judicial review, which would expand their jurisdiction without any limits and is directly antithetical to separation of powers."

Then, My Lords, para 49 is the political questions. Just one judgment, My Lords. Just see the last line on page 95. Political questions, it's totally irrelevant. It is raised in my learned friend's para 283 of the Written Submissions, which I mentioned in para 79 of my note. He raises it. And My Lords, the answer is the same **Kesavananda Bharati** paragraph from Justice Jaganmohan Reddy, which I've read already. So I'll save time by not reading it again. My Lord has got that at page 96? Same para.

CHIEF JUSTICE BR GAVAI: You are again... you already included that in the...

ABHISHEK MANU SINGHVI: Quoted the same thing. So, I'm not reading because that, My Lord, arose in... this is specifically a political question, I'm not reading it. **Minerva Mills**, My Lords, is next para 82, where it emphasises that judicial review is part of the basic structure. And then come to 98, which I have not read. **Minerva Mills**, "After emphasising judicial review as part of basic structure", come to 98. "But merely because the question has a political complexion, that by itself is no ground why the Court should shrink from performing its duty under the Constitution if it raises an issue of Constitutional determination", is the short answer in India. All these, My Lords, prerogative, political don't arise in India. It's either judicially reviewable, maybe not justiciable in one case. Judicially reviewable, maybe no manageable standards or judicially reviewable. "The controversy before the Court may be political in character, but so long as it involves a determination of a Constitutional question, the Court cannot decline to entertain it. So long as question is whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed, it would be its Constitutional obligation to do so. I have said before, and I repeat it again, that the Constitution is *suprema lex*, the paramount law of the land. And there is no department or branch or Government above or beyond it." This is **Minerva Mills**, My Lords. "Every organ of Government, be it the...

JUSTICE VIKRAM NATH: Yes.

ABHISHEK MANU SINGHVI: "Every organ of the Government, be it the Executive or the Legislature or the Judiciary, derives its authority from the Constitution, has to act within its limits. The Court is the ultimate interpreter of the Constitution. When there is manifestly unauthorised exercise of power, it is the duty of the Court to interfere."

1 And then, page 99. "The Court cannot shirk this responsibility, sworn the oath of allegiance to
2 the Constitution. It's also accountable to the people of this country." My Lord is not
3 accountable through elections. My Lord is not accountable through nominations, in that sense.
4 But My Lord is accountable in a different way that is frequently forgotten.

5 **CHIEF JUSTICE BR GAVAI:** It's always criticised that we are not answerable or
6 accountable to anyone.

7 **ABHISHEK MANU SINGHVI:** That's all right, My Lords. As Your Lordship knows the
8 limits, My Lords. So, then My Lords, page 100. Separation of Powers is there, I'll not read it,
9 My Lords. Now, My Lords, this very peculiar strange argument at 101. That... let me summarise
10 the argument. Mere withholding simpliciter and therefore falling through is an interim stage.
11 My Lord is frowned upon **Kihoto**, *quia timet actions*. *De facto*, we are on this side doing a
12 *quia timet* action barred by **Kihoto**. That's a simple summary of page 101, para 86 onwards.
13 My Lords, even as I state it, I don't understand how it arises. How two unlinkables are linked
14 by the Government, completely unlinkable. Let me give the answer from para 86. So, complete
15 red herring, misleading, and My Lords, completely erroneous. "Challenge to Governor's
16 inactions or actions or withholding of assent are not *quia timet* actions in the first place." He
17 has alleged it in para 414 of his submissions.

18 "Simpliciter withholding of assent without following the procedure of the first proviso is not a
19 mere interim action, but has serious and far reaching consequences of final act decision.."
20 Mark the word 'final act decision', "...of intentional inaction and indecision not envisaged in
21 200." It's very important. My Lords, first of all, just pause for 30 seconds, how is Your
22 Lordships for us holding back an assent keeping in the cupboard an interim action? It kills the
23 Bill. It's a complete killing of the Bill. And I can't do a so-called *quia timet action* because of a
24 defection law of **Kihoto**? "Simpliciter withholding..." I'm sorry. "Simpliciter withholding of
25 assent is not equivalent to merely leaving the Legislative process in medias res." This 'medias
26 res' is my learned friend's phrase, not mine. This medias res, I've picked up from his
27 submissions.

28 My Lords, I've read 87. Now, I'm on 88. I'm answering him, My Lords. In 88, he has used the
29 phrase 'medias res'. "It is not leaving the Legislative process in medias res." Medias res means
30 in limbo. "Such simpliciter withholding would amount to a veto of the Bill, which was never
31 envisaged by the Assembly..." I'm an 89. "...such unfettered and unchecked power outside
32 judicial review." Then, My Lords, **Kihoto** is only to be stated to be distinguished." Para 90
33 in... very quickly, My Lords. "Completely irrelevant. Firstly, there is nothing temporary or
34 transient or partial about withholding assent simpliciter. It can be permanent, indefinite.

1 Secondly, it is not in any manner akin to a Speaker acting as a Tribunal under the anti-
 2 defection law, who is acting in the process of taking a final decision. And therefore, in that
 3 context, **Kihoto** held in para 110." Chalk and cheese, My Lords, is my last line. Chalk and
 4 cheese.

5 Then, My Lords, 51 is the 361 argument. Before I read it, My Lords, one sentence. 361 protects
 6 you from civil, criminal, and tortious action of a personal nature. It does not even touch upon
 7 the judicial review of the decision which you have taken, which is open to all challenges. For
 8 which decision, certain people, this is not only President and Governor, so many people,
 9 Election Commissioners, CAGs, everybody's given that protection, that you may take a *bona*
 10 *fide* wrong decision. Court will strike it down, but 361 will not come, My Lords, as a damages
 11 claim. Otherwise, every decision can also have a damages claim. That's all there is. How it is
 12 relevant at all to Your Lordships' argument in judicial review, I don't know, My Lords. "Firstly,
 13 the bare text of 361 makes it clear that it is intended only as a protective shield against
 14 personal, civil, or criminal action".

15 92. "Secondly, the second Proviso to 361 itself makes it clear that the validity and legality of all
 16 decision by such Constitutional functionaries are liable to be assailed by agreed parties, and
 17 that 361 is in no manner intended to preclude the initiation of such legal and Constitution..."
 18 Otherwise, My Lords, by 361, you mean you can't challenge a decision of a Governor or a
 19 President? Just see the Proviso, My Lords, 361. Just for five seconds, just see that. It's the
 20 second Proviso in the first Clause in 361. So they give the protection in the opening words and
 21 the proviso. Then the second Proviso at 361. 361(1), Second Proviso. "Provided further that
 22 nothing in this Clause shall be construed as restricting the right of any person to bring
 23 appropriate proceedings against the Government of India or the Government of a State".

24 But I'm developing it more, My Lords. This is just reading the text. Kindly go further. 93, my
 25 page 103, para 93. "Constitutional challenges against wrongful actions by the Governors or
 26 Presidents has nothing to do with making them parties personally in proceedings instituted,
 27 which is admittedly barred under 361." Otherwise, My Lords, every decision or writ has a
 28 Governor's name in the decision, in the name of the Governor. Your Lordships would know.
 29 "Their actions or inaction would be defended by the relevant Government and State
 30 authorities, that is, by no way inhibited by 361." 94 is the one line... two-line summary.
 31 "Judicial review merely tests the validity and legality of such actions. Nothing to do with
 32 personal claims in contract, etc".

1 I now come, My Lords, to a very important part, the third set of submissions, which is on
2 questions 5 and 7, which is the timelines regarding Governor and President. That starts from
3 104. We have finished judicial review, judicial supremacy, 361, justiciability.

4 **CHIEF JUSTICE BR GAVAI:** Hopefully within your time also.

5 **ABHISHEK MANU SINGHVI:** My Lords, we'll be... I said so, My Lord, my timeline and
6 this timeline, will all...

7 **CHIEF JUSTICE BR GAVAI:** You had... your chart says four and a half hours. But at 12:00,
8 you'll be finishing your four and a half hours.

9 **ABHISHEK MANU SINGHVI:** No, no. My four and a half, I think, finishes...

10 **CHIEF JUSTICE BR GAVAI:** The chart shows four and a half hours. You started at 12:00
11 on the last day. 12:00 to 1:00, go to Court.

12 **ABHISHEK MANU SINGHVI:** After Your Lordships...

13 **CHIEF JUSTICE BR GAVAI:** Three hours have now...

14 **ABHISHEK MANU SINGHVI:** Only one person per State...

15 **CHIEF JUSTICE BR GAVAI:** Three and half hours, yeah.

16 **ABHISHEK MANU SINGHVI:** Only one person per State will be within our time, My
17 Lords. And I'll... this is the

18 **CHIEF JUSTICE BR GAVAI:** We are not, we are only saying according to the charts.

19 **ABHISHEK MANU SINGHVI:** We have worked it out, My Lords. We are not...

20 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Time of the other *Tamil Nadu*
21 Counsel...

22 **CHIEF JUSTICE BR GAVAI:** You are taking the time of Mr. Wilson and all others.

23 **ABHISHEK MANU SINGHVI:** That Your Lordship has barred already, My Lords. Your
24 Lordship has barred Hamlet without which the Prince of Denmark is being played. We'll work
25 it out. Your Lordships may be rest assured. Now, My Lords, 5 and 7 is a... one word is summed,
26 timelines. Let me read the summary which are the...

1 **CHIEF JUSTICE BR GAVAI:** Page?

2 **JUSTICE VIKRAM NATH:** 104.

3 **ABHISHEK MANU SINGHVI:** Page 104. Small page 104. Now, My Lords, let me
 4 summarise my submission in the beginning as usual, and then I'll expand. "Deletion of a
 5 timeline in an earlier draft article and substitution of 'as soon as possible' in the Assembly, is
 6 in no way a fetter or limitation on insertion of time limits to combat contemporary realities
 7 and the felt necessities of the time". This is a very important phrase which imbues Your
 8 Lordships' approach, 'felt necessities and contemporary realities'. "Such deletion does not in
 9 any manner act as an inhibition or estoppel. In respect of judicial stipulation of timelines, in
 10 the context of repetitively and indolently-delayed disposal of Bills by Constitutional
 11 Authorities." This is 102 to 104 is the first one. This also is covered in the same paras. "'As soon
 12 as possible' could well have been held in the formative years to be sufficient mainly on the
 13 basis that Bills pending with Constitutional authorities would not lapse upon dissolution of
 14 Parliament... of Assemblies of Parliament. Comprehensive Supreme Court jurisprudence has
 15 emphatically and repeatedly emphasised in diverse cases, the imperative urgency in disposal
 16 of pending Bills and the vital necessity to avoid all delay." These have become, My Lords, only
 17 with greatest respect and humility, sermons without a timeline being specified.

18 They have become... this, My Lords, repetitive, emphatic assertion by different judgments of
 19 Your Lordships have become pious hopes unless Your Lordships stipulates a timeline. "High-
 20 powered commissions dealing with the same Constitutional issues have repeatedly
 21 recommended time limits." That's 109 to 110. Then, My Lords, there is a gap of something
 22 which I'll tell Your Lordships when I come to it. "Purposive and theological interpretation".
 23 Now, this is a very important part of aide to interpret, purposive interpretation, what Your
 24 Lordships calls teleological interpretation. "Purposive and..." My Lord, this is wrongly typed.
 25 I'm very sorry. It's not theological. It should be teleological. Anything Your Lordships may do,
 26 but not do theological interpretation. That, My Lords, craze came from Bennion's very
 27 interesting book where he made it very, very difficult to read, but My Lords, an interesting
 28 book on interpretation. Kindly correct that, My Lords, teleological. "...is not only permissible,
 29 but vitally necessary to effectuate the true letter and spirit..." that's what Your Lordship does
 30 when you do teleological. "...where the absence of such an approach would frustrate the entire
 31 underlying purpose".

32 7th proposition. "The judiciary can impregnate the Constitution with new meanings, including
 33 timelines in the light of contemporary, well-known developments even if the founding fathers
 34 had not envisaged the serious distortion to which a particular provision would be subjected".

1 And last, My Lords, as you can't have completely always, a right, a pious hope and no remedy.
 2 So I put it as *ubi jus ibi remedium*. "To justify its stand, the timeline should not be set under
 3 200 and 201. It is, firstly, the argument of Union of India, that the powers in the said Articles
 4 are high plenary Constitutional functions, and therefore, no timelines can be attached." This
 5 is one argument, high plenary. I have already dealt with it, My Lords, about high plenary and
 6 prerogative. Secondly, I'm just summarising his points for this. In paras so and so, which I've
 7 given there of the learned Solicitor, he argues, "That the 200 requires the Governor to apply
 8 his mind independently, in deciding whether or not to assent to a Bill. Union of India has
 9 submitted that in doing so, the Governor has to consider..." this is the reason why he needs
 10 time, indefinite time, no time limit. It's amazing, My Lords, with great respect. And Union of
 11 India should think, My Lords, of the overall structure of the Constitution in the future.
 12 "Governor has to consider international aspects, security concern, and the political judgment."
 13 Then he should fight an election and become the Chief Minister, My Lords. "This argument of
 14 Union of India..."

15 **CHIEF JUSTICE BR GAVAI:** Why can't he consider international aspects, security
 16 concerns?

17 **ABHISHEK MANU SINGHVI:** No, he can consider it within the domain of sending it back
 18 once. That he can. He can neither withhold assent nor kill a Bill, nor decide not to do it. And
 19 ultimately, most important, as per the question asked, he can't be the judge of this. That is why
 20 this structure is a very delicate one clearly stated in 200. My Lords, had it been that he can't
 21 at all think, they would not have given that 1st Proviso. They gave that escape wall. But that
 22 doesn't make him My Lord, a decider, a judger, a final arbiter or super Chief Minister,
 23 everything, My Lords. And ultimately, we are passing unconstitutional bills every day,
 24 supposedly unconstitutional, allegedly unconstitutional. One Party thinks is wrong, one party
 25 thinks... My Lords, in the Parliament, there is a debate always that when you're introducing
 26 the Bill, you can't introduce this because of lack of competence. At the introduction stage,
 27 there's fights all the time. At the end of the day, if he's a majority, he introduces it. Then what
 28 happens? Your Lordship judges it. That's the meaning of Separation of Powers.

29 Now, My Lords, let us come to this 'as soon as possible'. There's very interesting material in
 30 the debates also. But first let's turn to 'as soon as possible' in para 100. **Punjab** is a perfectly
 31 valid judgment, well considered and considers this issue directly, My Lords, to a large extent.
 32 They interpreted this phrase as an imposition of a Constitutional mandate for expedition.
 33 "Imposition of a Constitutional mandate for expedition." Come to the para quoted, it's three
 34 Learned Judges. "The expression 'as soon as possible' is significant. It conveys a Constitutional
 35 imperative of expedition. Failure to take a call, and keeping a Bill duly passed for

1 indeterminate periods is a course of action inconsistent with that expression. Constitutional
 2 language is not surplusage. In ***State of Telangana***, this Court said, the expression 'as soon
 3 as possible' has significant Constitutional content and must be borne in mind by
 4 Constitutional authorities." All these empty phrases, pious hopes, sermons to be ignored,
 5 endlessly. "The Constitution evidently contains this provision, bearing in mind the importance
 6 which has been attached to the Power of Legislation which squarely lies in the domain of
 7 [AUDIO BREAKING]. The Governor cannot be at liberty to keep the Bills pending indefinitely
 8 without any action, whatsoever." You're almost there. The only thing they did not say is the
 9 time limit. But when you find repetitive inaction, you put a time limit. That's all that happened.
 10 Otherwise, he's saying everything about the time limit.

11 Then next with ***Telangana, 2024***. "The 1st Proviso to 200 says that the Governor may, as
 12 soon as possible, after the presentation, return the Bill, if it is not a Money Bill, together with
 13 a message for reconsideration. The expression 'as soon as possible' is a significant
 14 Constitutional conduct and must be borne in mind by Constitutional authorities." Now My
 15 Lords, just see the Constituent Assembly. It's interesting. "Article 91 in 111 mandated a
 16 timeline of six weeks. And an oversimplistic argument is raised that because Your Lordships
 17 deleted six weeks, therefore, you can't have a timeline." Just see how wrong it is. Now the
 18 argument is that Your Lordships original argument had six weeks. They dropped six weeks.
 19 Therefore, you can't have a timeline. Let's see that.

20 Para 102, "Provided that the President may not later than six weeks after the presentation to
 21 him for a Bill of assent, return the Bill." 103, "The phrase 'not later than six weeks' was
 22 substituted with 'as soon as possible'." No doubt. Now, Mr. Ahmad had a very interesting
 23 objection. Because he felt that 'as soon as possible' also signifies immediacy. It's too short. His
 24 argument was, make it longer or give it more time. It's too short. He says, "They did not leave
 25 any breathing time with the Governor. Yes sir, I beg to move, in amendment so and so, for 'as
 26 soon as possible', the word 'may be' substituted." Read the bold face. "If we leave it exactly as
 27 Dr. Ambedkar would have, it leaves no margin. 'As soon as possible' means 'immediately'."
 28 This was the meaning they understood in the Assembly.

29 **CHIEF JUSTICE BR GAVAI:** One of the members, yes.

30 **ABHISHEK MANU SINGHVI:** Yes, yes. No, no. This is accepted by the Assembly because
 31 'as soon as possible' is kept back on this reasoning. My Lord is right. His understanding...

32 **CHIEF JUSTICE BR GAVAI:** It was understanding of one of the members.

33 **ABHISHEK MANU SINGHVI:** His understanding... yes.

1 **CHIEF JUSTICE BR GAVAI:** Then one of the members recommended that it should be 'as
2 soon as possible but not greater than six weeks'. One of the members also said that it should
3 be 'as soon as possible but not later than six weeks'.

4 **ABHISHEK MANU SINGHVI:** So, My Lords, one was six weeks. Now, this is a later stage.
5 Give me a minute. Six weeks was dropped. And the draft which came before Mr. Ahmad had
6 'as soon as possible'. We are beyond that stage now. Mr. Ahmad is standing on a draft of 'as
7 soon as possible'. Now, he stands up and says, 'as soon as possible' is also too fast. Six weeks
8 is gone. My Lord is right. 'As soon as possible' is also too fast, too immediate, he says exactly.
9 Make it little more. Play in the joints margin, he says, for the Governor. Accepting that 'as soon
10 as possible' means an immediacy, Dr. Ambedkar and all his supporters retained that. That's
11 the sequence, I'm giving. So just reading Mr. Ahmad again. "'As soon as possible' means
12 immediately. Possibility, which means physical possibility, is the only test. It may leave no
13 breathing time to the President. The words 'may be' give him a reasonable latitude. It would
14 mean reasonably practicable. This is the obvious implication. This is the only reason why I
15 have suggested amendment." Now, after this Honourable Chief Justice's query, there is no real
16 discussion in the CAD, except minor things which are not relevant here.

17 **CHIEF JUSTICE BR GAVAI:** No, no. There is... one of the members suggested that you
18 add the word 'as soon as possible but not later than six weeks'.

19 **ABHISHEK MANU SINGHVI:** That was later. That was earlier. That was the earlier one.
20 My Lord is right.

21 **CHIEF JUSTICE BR GAVAI:** But during the same Clause.

22 **ABHISHEK MANU SINGHVI:** Yes, the draft came with six weeks. The draft came with six
23 weeks. When they dropped it to 'as soon as possible', then this debate of Mr. Ahmad took place.
24 The sequence is, My Lord is absolutely right, original draft had six weeks. They then said, 'as
25 soon as possible.' Mr. Ahmad says, no, this is also too fast. They retain and stick to it without
26 further discussion, is what I'm saying. "Mr. Ahmad canvassed for a reasonable timeline, which
27 was not immediate. He nowhere supported an indefinite time period..." as is the stance. It is
28 another second point, My Lords. "He nowhere supported another indefinite time period as
29 Union of India argues. Mr. Ahmad is only concerned to the extent that he wanted to loosen
30 what he thought was a very strict time limit as soon as possible, which he, Mr. Ahmad, read to
31 connote immediacy."

32 **CHIEF JUSTICE BR GAVAI:** Naziruddin Ahmad used to oppose each and every proposal
33 of Dr. Ambedkar.

1 **ABHISHEK MANU SINGHVI:** Your Lordship is right, whenever he got a chance to speak.

2 **KAPIL SIBAL:** HV Kamath.

3 **CHIEF JUSTICE BR GAVAI:** Yes, HV Kamath.

4 **ABHISHEK MANU SINGHVI:** HV Kamath too. Then, My Lords, skip the rest of the paras,
 5 come to 108. Now, Your Lordships may come to 108, at page 110, para 108. That middle
 6 quotation, except Your Lordship may skip. It's not so... "Furthermore, this Court has held, that
 7 where no timeline is fixed, the powers have to be exercised within a reasonable time period."
 8 I'll be coming to Your Lordship's doctrine of unoccupied... in fact, the dropping of six weeks,
 9 is the reason why Your Lordships can operate through judgements in the unoccupied field.
 10 Once there is a timeline in the statute, you cannot stipulate Judiciary. Judiciary can act in the
 11 unoccupied interstices, where felt necessities require. So the absence of a timeline is what
 12 enables Your Lordships to add that timeline.

13 Now come to ***Ram Chand***, 108.1. This is, My Lords, a proposition, that you must exercise a
 14 reasonable time. "But can it be said that before the introduction of the aforesaid amendment
 15 in the Act, the authorities were at liberty to proceed with the acquisition proceedings,
 16 irrespective of any schedule or timeframe, and to complete the same as and when they desired.
 17 They settled that in a statute where the exercise of power, no time limit is fixed, it has to be
 18 exercised within a time can be held to be reasonable."

19 Now, My Lords, come to 11. Ignore para 108, doesn't matter. Come to para 109. Look at all the
 20 commissions, My Lords, consistently one line. "The necessity to impose a specific timeline was
 21 also identified and suggested by the Sarkaria Commission, which in its report says, within one
 22 month from the date. A recommendation is made by the Punchhi Committee, a maximum of
 23 six months after the Bill is presented." Then comes Your Lordships at 110, the National
 24 Commission which is so called Venkatachaliah Commission. This is the Venkatachaliah
 25 Commission. They save, My Lords, a period of four months, about... they divide it, assent.
 26 Then other things are said, "delete the words withhold assent, etc., etc." Just see (f), what they
 27 say (f). (f) is very interesting, the Venkatachaliah Commission. Of course, it is a historical fact.
 28 In the alternate... it's Venkatachaliah Commission, not me, My Lords. "It may be more
 29 advisable to delete altogether the words of Article 200 empowering the Governor to reserve a
 30 Bill for the consideration of the President, except in the case contemplated by the 2nd Proviso
 31 to 200, and the cases where the Constitution requires him to do so. Such a course would not
 32 only strengthen the federal principle, but would also do away with the anomalous situation,
 33 where under a Bill passed by the State Legislature can be killed by the Union Council of

1 Ministers, advising the President to withhold his assent or just cold storage it". He goes very
2 far. This is the facet, I'm giving, My Lords.

3 Now, My Lords, come to 113. So, three commissions I have given there, My Lords. "In order
4 to..." I'm on para 113. "In order to interpret as soon as possible, the Union seeks to place
5 reliance on a selective extract from **Abdulla Kunhi**, which refers to **Francis Coralie**
6 **Mullin**". My Lords, I am now quoting the relevant part of another paragraph of this
7 judgement, which is, I believe My Lords, a Constitution Bench. This **K.M. Abdulla** is a
8 Constitution Bench, CB. Some of these things should have been written by us. We have not
9 written it there, My Lords. It's a Constitution Bench.

10 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** The Executive power principle, not
11 the Constitutional... basically Administrative law principle, not Constitutional law principle.

12 **ABHISHEK MANU SINGHVI:** No, I'm saying it's a Constitutional Bench. I'm only saying,
13 it is a Constitution Bench, My Lords. I am not disputing 'as soon as possible' will be Your
14 Lordships; interpretation.

15 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Administrative.

16 **ABHISHEK MANU SINGHVI:** Yes. My Lords, sometimes those two are intertwined very,
17 very broadly.

18 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Sometimes.

19 **ABHISHEK MANU SINGHVI:** Frequently, the *magnum opus* on that topic deal with both.

20 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Then why the Constitutional
21 argument.

22 **ABHISHEK MANU SINGHVI:** But they can be separated, no problem. "Article 5 of 22,
23 therefore casts a legal obligation on the Government to consider the representation early as
24 possible. It's a Constitutional mandate commanding the concerned authority to whom the
25 detenu submits his representation to consider the representation and dispose of that as
26 expeditiously as possible. The words 'as soon as maybe' occurring in 22(v) reflects the
27 concern." I'm only giving analogies, My Lords, analogies, "...reflects the concern of the framers
28 that the representation should be expeditiously considered and disposed off with a sense of
29 urgency without an avoidable delay. However, there can be no hard and fast rule depending
30 on the facts." Now, My Lords, this is cited against this judgment. This is cited against me. See

1 the next bold face. "The requirement, however, is that there should not be supine indifference,
 2 slack less or callous attitude in considering. Any unexplained delay in the disposal of
 3 repudiatory breach of Constitutional imperative could render the continued detention
 4 impermissible, illegal". Now My Lord **Keisham**, My Lords is aware of...

5 **CHIEF JUSTICE BR GAVAI:** It will be on preventive detention.

6 **ABHISHEK MANU SINGHVI:** I agree, My Lord. Because we are interpreting 'as soon as
 7 possible', so I'm just giving that citation. My Lords, 117 is **Manipur**. I think, Your Lordships
 8 is well aware of that. That is also a case where there is no timeline in the Tenth schedule. The
 9 Speaker is a high Constitutional authority. He's not of course... he's not probably acting as a
 10 Governor is. I know that. He is a *persona designata*. highest Constitutional authority...

11 **CHIEF JUSTICE BR GAVAI:** No, no, there's he's acting as a Tribunal.

12 **ABHISHEK MANU SINGHVI:** As a Tribunal.

13 **CHIEF JUSTICE BR GAVAI:** As a Tribunal.

14 **ABHISHEK MANU SINGHVI:** As a Tribunal, correct, correct, but no time is specified. So
 15 Your Lordships specified three months. I'm only on that. It's not that... My Lords, where the
 16 felt necessities...

17 **CHIEF JUSTICE BR GAVAI:** Three months in the facts of the same case.

18 **ABHISHEK MANU SINGHVI:** I beg your pardon. Yes, yes. That Your Lordships will
 19 decide. It's not that... I'm saying, My Lords, that, in fact, where there is nothing occupying the
 20 field directly and Your Lordship finds contemporary realities and felt necessity so required,
 21 then it is all the more easier and frequently done by Your Lordships. There is no Constitutional
 22 bar to those issues, that's what I'm saying.

23 **CHIEF JUSTICE BR GAVAI:** That's what I've observed in the Telangana matter.

24 **ABHISHEK MANU SINGHVI:** That's just coming My Lord.

25 **CHIEF JUSTICE BR GAVAI:** Is that, it was sought to argued by you. That is **Kihoto** and
 26 **Nabam**, no period is described. And therefore, this court is powerless to decide the waiting
 27 period.

28 **ABHISHEK MANU SINGHVI:** So direct theory, there is unoccupied field theory.

1 **CHIEF JUSTICE BR GAVAI:** Answering your arguments, I observed that the section in
2 ***Kihoto*** and...

3 **ABHISHEK MANU SINGHVI:** I'm relying heavily on the argument opposite to me which
4 Your Lordships accepted and rejected my argument. I'm entitled to My Lords.

5 **CHIEF JUSTICE BR GAVAI:** The authors of the Constitution Bench would not have at that
6 time imagine that the Speakers would sit endlessly and...

7 **ABHISHEK MANU SINGHVI:** Exactly. That is what is meant by contemporary realities
8 and the felt necessities of the time. My Lords, otherwise, what is all this that a Constitution is
9 an organic document. It's an evolving document. It is an evolutionary trajectory which changes
10 with the times. All these are mere phrases unless Your Lordship transforms them into action
11 in reality because Your Lordships finds it across the country. I'm not saying anything political.
12 I'm saying this is a reality. That is the real point. If Your Lordship finds... that's why I've given,
13 My Lords, notes of proposition in the beginning. Just because the founder fathers never
14 envisaged a distortion, it doesn't mean Your Lordships can't check that distortion today. My
15 Lords, I just noticed that it can be done right now on the site. Your Lordships' judgement... it's
16 in Volume 5.43. Your Lordships should just note the citation on the site, since Your Lordships
17 dealing with ***Manipur***.

18 **CHIEF JUSTICE BR GAVAI:** No, ***Manipur*** is **Keisham**.

19 **ABHISHEK MANU SINGHVI:** No, I'm saying ***Telangana***. Your Lordships should make
20 a note on the site. I've not put it there. So, it may help Your Lordships, My Lords. Citation is...
21 very well. It doesn't need a citation.

22 **CHIEF JUSTICE BR GAVAI:** It doesn't need, you know.

23 **ABHISHEK MANU SINGHVI:** Volume is V.43 and the relevant page is 17251, para 99.
24 That is, Your Lordships must act unless you are prohibited from acting. Otherwise, My Lord
25 is not doing justice in the felt necessity of the time. Citation, Your Lordship knows, 2025 SCC
26 online. SC1576. It's there on that Volume 41. Now, My Lords, I have quoted ***Kihoto***, so I am...
27 My Lords, just see ***Anoop Baranwal***, which I've quoted in 117.

28 **CHIEF JUSTICE BR GAVAI:** In the ***Allahabad*** case, Court itself held that they were
29 entitled to be disqualified, and the Supreme Court disqualified them.

- 1 **ABHISHEK MANU SINGHVI:** That's coming, exactly. I have cited, I have put it there. Your
 2 Lordships felt that you've gone up the ladder. You've come up here. Now I send it back to the
 3 Speaker. Now, again, the Speaker starts. He says, there is nothing which is prohibiting me, so
 4 we do it here. My Lord gave the declaration and *mandamus* here. So, if Your Lordships do
 5 not...
- 6 **TUSHAR MEHTA:** My Lord, two months were left. The tenure of the Assembly were two
 7 months left. Therefore, Court said sending it back will no meaning.
- 8 **ABHISHEK MANU SINGHVI:** No, no, what they did was not the point.
- 9 **CHIEF JUSTICE BR GAVAI:** The Court held that...
- 10 **ABHISHEK MANU SINGHVI:** It's the power which was exercised.
- 11 **CHIEF JUSTICE BR GAVAI:** ...the agreed fact that the persons who were elected from
 12 Bahujan Samaj Party addressing a letter that Mr. Mulayam Singh should be appointed as the
 13 Governor of [UNCLEAR] wanted to...
- 14 **TUSHAR MEHTA:** Voluntarily giving up the membership of original political party.
- 15 **CHIEF JUSTICE BR GAVAI:** No. In *Keisham* also, it was sought to be argued that this
 16 should be followed in *Keisham* also. Court rejected that plea.
- 17 **TUSHAR MEHTA:** This UP Allahabad Judgment is *Rajendra Singh Rana*.
- 18 **ABHISHEK MANU SINGHVI:** This quote is coming here.
- 19 **TUSHAR MEHTA:** It was confirmed in, I think in *Jagjit Singh*. *Jagjit Singh* is
 20 confirmed in *Rajendra Singh Rana*.
- 21 **ABHISHEK MANU SINGHVI:** *Rajendra Singh Rana* is constituted in when they
 22 require confirmation, so it's confirming the other judgments.
- 23 **TUSHAR MEHTA:** No, no. The three-judge bench was confirmed in Constitution.
- 24 **ABHISHEK MANU SINGHVI:** My Lord, one little thing which is missed out, we will add
 25 in hand. My Lords may write 117(a) para. Two lines, it's not there.
- 26 **JUSTICE VIKRAM NATH:** 117 (a) is here.

- 1 **CHIEF JUSTICE BR GAVAI:** *Anoop Baranwal* is there.
- 2 **ABHISHEK MANU SINGHVI:** This *Anoop Baranwal* is, My Lords, in 5.48 Volume, that
3 is not there, at page 18853. Just write that. There is a passage there in para 291 and 301 which
4 I wanted to read.
- 5 **CHIEF JUSTICE BR GAVAI:** Para... page?
- 6 **ABHISHEK MANU SINGHVI:** My Lords, it's Volume V.48, that is V is 5.
- 7 **CHIEF JUSTICE BR GAVAI:** V.48
- 8 **ABHISHEK MANU SINGHVI:** Page 18853.
- 9 **CHIEF JUSTICE BR GAVAI:** 18...?
- 10 **ABHISHEK MANU SINGHVI:** 18853, at para 291 is that page, and 301, two paras.
- 11 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Para 291 and 301?
- 12 **ABHISHEK MANU SINGHVI:** Correct. This is that general theory of, My Lords,
13 unoccupied field. If My Lords will just turn to that 291, if all My Lords have got it? Justice
14 Narasimha, Justice Surya Kant? Just two small portions, I will read. Justice Surya Kant has
15 got it? Lower part, My Lords, at D, just above D. "While it is true that ordinarily the Court
16 cannot without anything more, usurp...
- 17 **CHIEF JUSTICE BR GAVAI:** No, you are at page 291?
- 18 **ABHISHEK MANU SINGHVI:** No. Para 291, My Lords.
- 19 **CHIEF JUSTICE BR GAVAI:** Para 291, "In fact, we may..."?
- 20 **ABHISHEK MANU SINGHVI:** That's correct. Now, at placitum D, in that para, D for Delhi.
- 21 **CHIEF JUSTICE BR GAVAI:** "While it is true that..."?
- 22 **ABHISHEK MANU SINGHVI:** "While it is true that ordinarily the Court cannot, without
23 anything more, usurp what is purely a Legislative power of function, in the context of the
24 Constitution which clothes the citizens with Fundamental Rights and provides for
25 Constitutional goals to be achieved, an inertia of the Legislative department producing a clear
26 situation..." Here, there is inertia of not Legislative department, some other department also.

1 "...where there exists veritable gaps or a vacuum, the Court may not shy away from what
2 essentially would be part of its judicial function". This is also, My Lords, a Constitution Bench.
3 Kindly note that on the side.

4 **CHIEF JUSTICE BR GAVAI:** Anoop...

5 **JUSTICE VIKRAM NATH:** Baranwal.

6 **CHIEF JUSTICE BR GAVAI:** Baranwal is in which page?

7 **JUSTICE VIKRAM NATH:** CEC.

8 **ABHISHEK MANU SINGHVI:** My Lords, it's not 301, my apologies, Justice Vikram Nath
9 noted it out, it's 309. The second para is 309.

10 **JUSTICE VIKRAM NATH:** 291 and 309?

11 **ABHISHEK MANU SINGHVI:** Yes. "In the unique nature of the provision..."

12 **CHIEF JUSTICE BR GAVAI:** Anoop Baranwal, I think, it must be with regard to the
13 appointment of the Election Commissioner.

14 **TUSHAR MEHTA:** CEC, Election... Chief Election Commissioner. Chief Election
15 Commissioner, the Article provided that till the law is made, this is the position. That was the
16 issue.

17 **ABHISHEK MANU SINGHVI:** That's unoccupied field. That's unoccupied field. Till you
18 make... suppose you make a Constitutional Provision that there shall... the Governor may not
19 decide...

20 **TUSHAR MEHTA:** Sorry, there the Constitutional Provision provided that till the law is
21 made by the Parliament, this would be the position.

22 **ABHISHEK MANU SINGHVI:** My Lord, it was not so simple as that. It was opposed tooth
23 and nail saying that you cannot provide for a system of election or selection of the
24 Commissioners. The Court said that since there is an unoccupied field where no law exists as
25 to how you will appoint, we can prescribe that. They did much more than a timeline. Much,
26 much more than a timeline. Today, My Lords, suppose My Lord gives a timeline. Let me
27 answer my learned friend in 30 seconds. Suppose Your Lordships gave a timeline of one
28 month. Tomorrow, the Government enacts, there shall be minimum of six months. Obviously,

Your Lordships' timeline will go. They will amend the Constitution. That's all that that Constitution Bench did. There was no provision saying that you can do this or that. The provision was silent. This is a judgment on silence, which also takes care of the other argument on Constitutional silences and abeyances.

It is true that silences are pregnant with meaning. They are sometimes most eloquent. But equally it is true that silences allow Your Lordships to operate in the unoccupied interstices where public interest so desires. It's the second point which I'm emphasising here. Here, My Lords, the Constitution Bench created a whole system of selection of the CEC only because of Constitutional silence. And I have read 291 directly on point. It is to further the object. Obviously, My Lords, it goes without saying that Your Lordship makes some timeline and my learned friend passes a Constitutional law one month later, obviously it will go.

Now 309. 309, "In the..." para number, My Lords. "In the unique nature of the provision, we are concerned with the devastating effect of continuing to leave appointments in the sole hands of the Executive on fundamental values as also fundamental rights." Is this not public interest for us, and much more nebulous than our case. Our case is directly, objectively verifiable cases of 1500 days, 1200 days, 1000 days. "We are of the considered view that the time is ripe for the Court to lay down norms. In other words, the vacuum exists..." Mark the word, "... vacuum exists on the basis that, unlike other appointments, it was intended all throughout that appointment exclusively by the Executive was to be a mere transient or stopgap arrangement. And it was to be replaced by a law made by Parliament taking away the exclusive power of the Executive." In our case is 'as soon as possible'. In our case, you have a clear 'as soon as possible' in the Constitution itself. This conclusion is clear and inevitable, and the absence of law, even after seven decades, points to the vacuum, Constitution Bench. Then, My Lords, I will skip this **Kihoto** and come to para 122.

CHIEF JUSTICE BR GAVAI: Of the notes?

ABHISHEK MANU SINGHVI: Of my note, my notes. This is **Anoop Baranwal**, Your Lordships had put at 117(a), which is already there, but these details are not there. The details are not there. That will be written by hand or something. My Lords, "122 is just to dispel a completely inapposite example given by the other side. No timelines can be given is a principle for adjudicating criminal cases", because valuable rights of appeal are taken away. That's **P. Ramachandra Rao**. They said... seven judges, **P. Ramachandra Rao** is seven judges, in para 122. They frowned upon laying down time limits for criminal adjudication because, My Lords, the rights of the accused could be infringed. So they laid down the principle in seven judges in that. That's a total inapposite example to, My Lords, deal with.

1 Now, My Lords, 123. I am fully aware, My Lords, that Your Lordships are not hearing any
2 appeals from the division bench of **Tamil Nadu** judgment. We are all aware of that. I am
3 reading a few paras to just try and illumine the reasoning. From 123. Come to page 118, para
4 19. "The position of law is settled that even though where no time limit is prescribed for the
5 exercise of any power under a statute, it should be exercised within a reasonable time." That
6 is the principle. Now, My Lords, please delete 124 and 125, including the chart. This is
7 important, My Lords. Your Lordship will be deleting pages 118 to 121.

8 **CHIEF JUSTICE BR GAVAI:** Delete?

9 **ABHISHEK MANU SINGHVI:** Just delete, My Lords, from para 124 to para 125, which
10 spreads across pages 118 to 12...

11 **CHIEF JUSTICE BR GAVAI:** Because otherwise, you will get a...

12 **ABHISHEK MANU SINGHVI:** No, I'm not yet... I'm not conceding to his objection. I'm
13 doing a different thing, My Lords. Now, these pages are deleted. Your Lordships will just note
14 one thing. I am not interested in the facts of any case. I am not arguing, your facts would be
15 relevant, if Your Lordship decided that this delay in this State is unconstitutional. I have a
16 chart here of **Tamil Nadu** and **Kerala** only, which gives My Lords, all the Bills which are in
17 more than 30 days, 90% of which got ignored...

18 **CHIEF JUSTICE BR GAVAI:** The Learned Solicitor had said that if you rely on this...

19 **TUSHAR MEHTA:** Then we have charts for other States.

20 **CHIEF JUSTICE BR GAVAI:** Then they will get all... so many charts from 1950. So let us
21 restrict ourselves to...

22 **ABHISHEK MANU SINGHVI:** No, My Lord, suppose I was to say...

23 **TUSHAR MEHTA:** If he wants to travel that dirty path, I have no difficulty. I am ready to
24 travel that path as well. But it's not necessary, it's a Presidential reference.

25 **ABHISHEK MANU SINGHVI:** Mr. Mehta, threats don't work. Allow me to make my
26 submission.

27 **TUSHAR MEHTA:** It's not a threat. It's a suggestion to you...

- 1 **ABHISHEK MANU SINGHVI:** You can choose your own path. Allow me to finish. My
 2 Lords, suppose, there are States other than *Tamil Nadu* and *Kerala* which he has, he must
 3 be having, where there's the same delay?
- 4 **TUSHAR MEHTA:** No, no. I have details from 1947, where the Constitution was taken on a
 5 joyride.
- 6 **ABHISHEK MANU SINGHVI:** He must be having, My Lords. Let him not interrupt me,
 7 My Lords. He's heading to... let him not interrupt me.
- 8 **CHIEF JUSTICE BR GAVAI:** [UNCLEAR] Solicitor in 1947, 201 was not there, 200 and
 9 201.
- 10 **ABHISHEK MANU SINGHVI:** He may have, My Lords...
- 11 **TUSHAR MEHTA:** From, My Lords, the inception of the Constitution...
- 12 **CHIEF JUSTICE BR GAVAI:** So, he will have to rely on 1935 provisions. Government of
 13 India Act, 1935. So, if you are relying on any delays between '47 to '50, you will have to rely on
 14 this... not on 200 and 201 of...
- 15 **TUSHAR MEHTA:** Your Lordships have understood, and they have understood my
 16 reference to 1947. But from the date the Constitution came into force, how My Lord, the
 17 Constitution was treated and with contempt...
- 18 **ABHISHEK MANU SINGHVI:** My Lord, allow me...
- 19 **CHIEF JUSTICE BR GAVAI:** We are not going to go into that. So [UNCLEAR].
- 20 **ABHISHEK MANU SINGHVI:** I've not made my submissions. He's pre-empting me. Your
 21 Lordship has not even... he is not even allowing me to make the submission.
- 22 **TUSHAR MEHTA:** Based on these facts, then Your Lordships may not even take this on
 23 record. So, that's why...
- 24 **ABHISHEK MANU SINGHVI:** Now, we all understand that you are threatening to show
 25 that all ills of governance are traceable to 1947. You need not say that. We are not on that.
- 26 **CHIEF JUSTICE BR GAVAI:** Mr. Singhvi, restrict yourself to the legal argument. Let us
 27 not go into the facts of the...

- 1 **ABHISHEK MANU SINGHVI:** Allow me to formulate it. The moment I mention some fact,
2 he gets up...
- 3 **CHIEF JUSTICE BR GAVAI:** Time and again, we don't want it to be...
- 4 **ABHISHEK MANU SINGHVI:** My Lord, the moment I'm...
- 5 **CHIEF JUSTICE BR GAVAI:** We don't want this to be converted into a platform for your
6 political, whatever it might be.
- 7 **ABHISHEK MANU SINGHVI:** So, let me make my submission.
- 8 **TUSHAR MEHTA:** I have not said a word except law.
- 9 **CHIEF JUSTICE BR GAVAI:** Can we also have some...
- 10 **TUSHAR MEHTA:** Yes, My Lord.
- 11 **CHIEF JUSTICE BR GAVAI:** Audience, if both of you permit.
- 12 **TUSHAR MEHTA:** No, My Lord, I...
- 13 **ABHISHEK MANU SINGHVI:** So, let me not go to any facts. Let me make my proposition.
- 14 **CHIEF JUSTICE BR GAVAI:** Stick yourself on the legal submission.
- 15 **ABHISHEK MANU SINGHVI:** The proposition I'm making...
- 16 **CHIEF JUSTICE BR GAVAI:** With the proposition, yes.
- 17 **ABHISHEK MANU SINGHVI:** ...is only illustrative. Suppose, My Lord... just give it 30
18 seconds only. I will not labour the point. I'm sorry. Assume that I am giving Your Lordships
19 illustratively, ten examples. Assume, he has 50 examples, two wrongs don't make a right. The
20 legal principle will be the same.
- 21 **CHIEF JUSTICE BR GAVAI:** You just make a proposition just that, you can say that
22 endless withholding is....
- 23 **ABHISHEK MANU SINGHVI:** Right.
- 24 **CHIEF JUSTICE BR GAVAI:** ...is not permissible in law. So, why should we go to the facts?

- 1 **ABHISHEK MANU SINGHVI:** No, no, My Lords. Your Lordship is...
- 2 **CHIEF JUSTICE BR GAVAI:** Otherwise, we'll be adding what happened. We'll have to
3 listen what happened in '47, '75, and all that. Why do you want to...?
- 4 **ABHISHEK MANU SINGHVI:** I...
- 5 **CHIEF JUSTICE BR GAVAI:** We don't want this to be converted into your political...
- 6 **TUSHAR MEHTA:** I had some interesting facts, My Lords. Therefore, My Lords...
- 7 **ABHISHEK MANU SINGHVI:** My learned friend is interrupting my time, My Lord. It is
8 not fair.
- 9 **TUSHAR MEHTA:** I had those interesting facts also.
- 10 **ABHISHEK MANU SINGHVI:** Yes, yes.
- 11 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Our decision is not data based.
- 12 **CHIEF JUSTICE BR GAVAI:** Yes. Our decision is on questions of law, interpreting the
13 Constitution.
- 14 **ABHISHEK MANU SINGHVI:** Why I am saying this is that Your Lordships' interpretation
15 of the Constitution depends on contemporary realities and felt necessities of the time is a test
16 by Your Lordships. It's a test of purposive interpretation. Now, all that I did was... he
17 interrupted me three times when I mentioned the word chart, My Lords. I'm not giving it even
18 to Your Lordships. I have a chart here which has these four propositions, illustratively. I
19 assume that it is true of West Bengal. I'm assuming it is true of all other States. Two wrongs
20 will not make a right, Your Lordships' adjudication. That's the point he's missing out. He says,
21 I got another chart. Let him show another chart. He will support my proposition. He'll be
22 supporting my proposition.
- 23 **TUSHAR MEHTA:** Why this is...
- 24 **ABHISHEK MANU SINGHVI:** Mr. Mehta, please...
- 25 **CHIEF JUSTICE BR GAVAI:** We are not going to decide the matter on the basis of which
26 political dispensation is in power or was in power.
- 27 **ABHISHEK MANU SINGHVI:** No, no. My Lords, all I am saying...

1 **CHIEF JUSTICE BR GAVAI:** We are going to decide on the interpretation of the
2 Constitution.

3 **ABHISHEK MANU SINGHVI:** I am asking myself a question. I am asking myself a
4 question, the contemporary realities, purposive interpretation, theological interpretation, and
5 felt necessity of time. Can Your Lordships ignore that in the sole case of *Tamil Nadu* which
6 actually occurred in this Court, has in this chart, 57 Bills? The maximum delay in one or two
7 is 1257 days. Three Bills, from 500 to 1000 days. No, three bills more than 1000. Five... six
8 Bills, 500 to 1000. That's all I'm saying. This matter came to the other Court, My Lords.

9 **JUSTICE SURYA KANT:** Dr. Singhvi...

10 **ABHISHEK MANU SINGHVI:** It's not some foreign material.

11 **JUSTICE SURYA KANT:** Dr. Singhvi, these things you are relying upon, it also contains the
12 Bills which were passed just recently in April 2025 also, right?

13 **ABHISHEK MANU SINGHVI:** I'm not counting the 30-days Bills. Your Lordship is right.

14 **JUSTICE SURYA KANT:** If this box is opened, then we may be required to have the list of
15 those Bills... hundreds of Bills that might have been assented also.

16 **TUHSAR MEHTA:** And the reasons for withholding is for reconsideration and sending it
17 back, etc.

18 **ABHISHEK MANU SINGHVI:** My Lords, my time is precious. I am not...

19 **JUSTICE SURYA KANT:** You are not ready to parallel questioning to examine what kind
20 of amendments or changes you are referring to here.

21 **ABHISHEK MANU SINGHVI:** 90% of these Bills, I'm not touching upon. I am mentioning
22 three facts. One Bill is 1257. Three bills are more than 1000. And six Bills are 500 to 1000,
23 that's it, full stop.

24 **JUSTICE SURYA KANT:** So, eventually, let us consider only the point of 'as soon as
25 possible'.

26 **TUSHAR MEHTA:** Yes.

27 **JUSTICE SURYA KANT:** And your interpretation is...

1 **ABHISHEK MANU SINGHVI:** And purposive and felt necessities.

2 **JUSTICE SURYA KANT:** ...'As soon as possible' means reasonable time. Now you are
3 wanting that instead of word 'reasonable', we should also have a timeline, like 190 days, 250
4 days.

5 **ABHISHEK MANU SINGHVI:** By a purposive interpretation, by a purposive
6 interpretation.

7 **JUSTICE SURYA KANT:** That is your argument precisely?

8 **ABHISHEK MANU SINGHVI:** That's right. By a purposive interpretation, keeping in view
9 contemporary realities, not functioning in an ivory tower, which my learned friend perhaps
10 wants Your Lordships to function, and by the felt necessities of time. These are standard
11 techniques of judicial review and interpretation which I'm canvassing. What Your Lordship
12 does is Your Lordships' prerogative.

13 Now, My Lords, I come to page 121. On purposive interpretation, just come to the three-judge
14 judgment in *Ashok Kumar Gupta*. Page 122. "The Constitution..." My Lords, it's the third
15 line. "It is not only designed to meet the needs of the day when it is enacted, but also the needs
16 of the altering condition of the future. It contains the..." Mark these words, My Lords, "...for
17 purposive, dynamic interpretation. It is not designed to meet the needs of the day when it is
18 enacted, but also the needs of the altering conditions of the future. It contains a framework or
19 mechanism for resolution of Constitutional disputes." Ten lines below. "Concepts may keep
20 changing..." These may not be underlined, My Lord. Your Lordships may underline it. They
21 have not been underlined. "Concepts may keep changing to expand and elongate the rights.
22 Constitutional issues are not solved by mere appeal to the meaning of the words without an
23 acceptance of their line of growth."

24 123. "The great tides..." Page 123, 7th line. "The great tides and currents which engulfed the
25 rest of men do not turn aside in their course and pass the Judges idly by. Law should subserve
26 social purpose. A judge must be a jurist endowed with Legislator's wisdom, historian's search
27 for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope
28 with the demands of the future, and decide objectively disengaging themselves. Therefore, the
29 Judges should adopt purposive interpretation of the dynamic concepts of the Constitution,
30 and the... act with its interpretive armoury to articulate the felt necessities of the time." These
31 are the only things I'm trying to expound, My Lords. "The judge must also bear in mind that
32 social legislation is not a document for fastidious dialect, but the means for ordering life."

1 Then, My Lords, next page, 124 bottom. "The Judge, therefore, should respond to the human
 2 situations to meet the felt necessities of the time and the social needs, make meaningful the
 3 right to life, and give effect to the Constitution, the Bill of the Legislature. The Court is a vehicle
 4 of transforming the nation's lives in response to the nation's need, interpret the law with
 5 pragmatism, to further public welfare, to make Constitutional [UNCLEAR] a reality, and
 6 interpret the Constitution broadly and liberally, enabling the citizens to enjoy rights."

7 125, **Sakal**. "It must be borne in mind that the Constitution must be interpreted in a broad
 8 way, and not in a narrow and pedantic sense. Certain rights have been enshrined in our
 9 Constitution as fundamental. And therefore, while considering the nature and content of those
 10 rights, the Court must not be too astute to interpret the language in so literal a sense as to
 11 whittle them down. On the other hand, the Court must interpret the Constitution in a manner
 12 that enables citizen to enjoy the rights, guaranteed by it in the fullest measure, subject, of
 13 course, to permissible restrictions."

14 Para 51, "Therefore, it is but the duty of the Court, to supply vitality, blood and flesh to balance
 15 the competing rights by interpreting the principles of the language, or the words contained in
 16 the living, organic Constitution, broadly and liberally. The judicial function of the Court is to
 17 build up by judicial statesmanship and judicial review, smooth social change under the rule of
 18 law, with a continuity to past to meet the dominant needs and aspirations of the present. This
 19 Court is a sentinel on the *qui vive* has been invested with more freedom in the interpretation
 20 of the Constitution than in the interpretation of other laws. This Court is therefore not bound
 21 to accept an interpretation, which retards the progress or impedes social integration. It adopts
 22 such interpretation to be bring about the ideal set down, etc."

23 Then, My Lords, in the **NCT** case, at page 126, come to 127. At 127, "Therefore, a Constitutional
 24 Court, while adhering to the language employed in the provision should not abandon the
 25 concept of the intention, spirit and holistic approach, and constitutional legitimate expectation
 26 which combined project a magnificent facet. The Court should pose a question to itself,
 27 whether a straight, literal, and textual approach would annihilate the sense of the great living
 28 document which is required to be laser beamed to illuminate. If the answer is in the
 29 affirmative, then the Constitutional Court should protect the sense and spirit of the
 30 Constitution, taking aid of purposive interpretation, as that is the solemn duty of the
 31 Constitutional Courts as the final arbiters. It is a Constitutional summon for performance of
 32 duty. The stress has to be on changing society's relevant political values, absence of political
 33 prohibition, and legitimacy."

1 Then, My Lords, there are a number of cases, given on purposive, which I am not reading, but
 2 Your Lordship will mark all the way to page 133, are very important, My Lords. "Purposive
 3 Interpretation Quotations." Unless and until Your Lordship purposively interprets the
 4 Constitution in the present context of 200, by stipulating timelines, Your Lordship would
 5 really be reducing it to a mere formality, an expectation of hope, a pious declaration, but no
 6 real teeth. That's the submission.

7 At 134, My Lords, I have given the last of the interpretation approaches, which is remediless,
 8 remediless. If you have no time limit in 200 and 201, then My Lords, there is complete
 9 remediless situation, which is what **Kabra** says at page 134. It's again, a Constitution Bench,
 10 which may not be written there. Your Lordships may write it down. Second half of the bold
 11 face, My Lords. In the bold face, second, starting with "As and when..." "As and when, it is
 12 found necessary to interfere with the judgement, and decree challenge before it, the Court can
 13 always declare the legal position in general, and restrict the ultimate relief to be granted by
 14 confining to those before the Court only, rather than denying the relief to one and all on
 15 account of a procedural lapse or action and inaction. The only exception to this course, would
 16 be whether the relief granted, and the decree ultimately passed would become totally
 17 unenforceable, and mutually self-destructive, and unworkable. As far as possible, Courts must
 18 always aim to preserve and protect the rights, and extend the help to enforce them, rather than
 19 deny relief, and thereby render the rights *ubi jus ibi remedium*, where there is a right, there is
 20 remedy, etc."

21 **CHIEF JUSTICE BR GAVAI:** In other words, there can't be a wrong without a remedy?

22 **ABHISHEK MANU SINGHVI:** My Lords, what your Lordships says, in different ways,
 23 operation successful, patient dies. [UNCLEAR] a declaration and a pious hope of no meaning.
 24 A sermon, My Lords, uses the words in several cases. Your Lordships, judicially, if I may use a
 25 colloquial phrase, would have judicially walk the talk to effectuate this. Now, My Lords, I come
 26 to a few peripherals... not I will not call them peripheral, the remaining issues very quickly and
 27 briefly. Now, Question 8 is the 143 question. "That are you obliged to seek a 143 reference?"
 28 Just note the short answer. Then, My Lords, I will...

29 **CHIEF JUSTICE BR GAVAI:** You are reading at page?

30 **ABHISHEK MANU SINGHVI:** I am now at page 135. This is, My Lords, Question 8, which
 31 is... now we have finished judicial review. We have finished timelines. We have finished
 32 discussions on the first day. Now, My Lords, we have few remaining questions individually.
 33 So, Question 8 is, "That is the President required to mandatorily come to Your Lordships at

1 143, every time there's a doubt or a question?" That is question framed in Question 8, at 135
 2 top. May I first answer it and then take Your Lordships to 2 paras. It is very simple. Nobody is
 3 saying that the President..." Governor does not have the power, My Lords... "is mandatorily
 4 obliged in every case of such a Question to come to Your Lordships in 143". Nobody has said
 5 it, nobody is saying it.

6 **CHIEF JUSTICE BR GAVAI:** That question has arisen?

7 **ABHISHEK MANU SINGHVI:** That question has arisen, I will tell it to you.

8 **CHIEF JUSTICE BR GAVAI:** It has arisen in view of the judgment of the two judges. It is
 9 not as if that question has not arisen.

10 **ABHISHEK MANU SINGHVI:** I appreciate. It will not arise.

11 **CHIEF JUSTICE BR GAVAI:** Division Bench holds that, though we are not sitting in an
 12 appeal, you can't ignore the fact that the Division Bench holds that whenever the President has
 13 a doubt. the President should mandatorily refer to ...

14 **ABHISHEK MANU SINGHVI:** I am very grateful. That is wrong. That is a wrong
 15 impression given to Your Lordship. The Learned Judge, we are not sitting in appeal. First, the
 16 question doesn't arise for the simple reason that I agree, everybody agrees. That's not obliged.
 17 The Learned Division Bench does not make it mandatory for the President at all. They should,
 18 if there is something, but they're not at all. See the language now, that's the answer. It's a
 19 completely, My Lords, distorted question asked by creating a question while nothing remains.
 20 See the judgement straightaway.

21 **CHIEF JUSTICE BR GAVAI:** If you are agreeable that this is not mandatory then there is
 22 no point in arguing further.

23 **ABHISHEK MANU SINGHVI:** No, it is not. It is an empowering para. No, I must satisfy
 24 My Lords on the judgement also. Give me a minute. Come to 139. It's an empowering para.
 25 That if the Learned President is confused or doubting or wants a query, he may or she may.
 26 How can this be, My Lords? Kindly read it.

27 **CHIEF JUSTICE BR GAVAI:** Page?

28 **ABHISHEK MANU SINGHVI:** 139 of my para. Your Lordship has enough other work to
 29 do than answering questions. It doesn't arise to judgment at all. This reference is the context

1 of a judgment also. We are not in appeal on the judgment, but we are in the context of a
2 judgment.

3 **CHIEF JUSTICE BR GAVAI:** Of a judgment?

4 **ABHISHEK MANU SINGHVI:** Yes, yes. "They are of the considered view that although the
5 option to refer..." Mark the word option ..."to refer under 143 may not be mandatory". It's
6 simple, My Lords. This language gives the full option. Why should Your Lordships be
7 answering questions which are created? Is this question necessary to spend Your Lordships'
8 time on?

9 **CHIEF JUSTICE BR GAVAI:** Read further, read further.

10 **ABHISHEK MANU SINGHVI:** I am reading. I am reading all of it.

11 **TUSHAR MEHTA:** Conclusion (XX).

12 **ABHISHEK MANU SINGHVI:** I've quoted it. Allow me to read it.

13 **TUSHAR MEHTA:** Conclusion (XX).

14 **ABHISHEK MANU SINGHVI:** "Yet the President as a measure of prudence..."

15 **TUSHAR MEHTA:** Read fully, please.

16 **ABHISHEK MANU SINGHVI:** I don't understand his anxiety on every sentence.

17 **TUSHAR MEHTA:** Whatever written, they are not fair.

18 **CHIEF JUSTICE BR GAVAI:** There is no interruption from the other side.

19 **ABHISHEK MANU SINGHVI:** It's totally unfair.

20 **CHIEF JUSTICE BR GAVAI:** We expect the same.

21 **TUSHAR MEHTA:** Yes, My Lords, because I didn't miss anything. I didn't selectively read.

22 **ABHISHEK MANU SINGHVI:** What is selective, My Lords. I have quoted it in my... this is
23 very unfair charges being made. Please have some restraint. I've put quoted it, and I have
24 quoted it selectively. "We are of the considered view that although the option to refer a Bill to
25 this court, under 143, may not be mandatory, yet the President, as a measure of prudence..."

- 1 **CHIEF JUSTICE BR GAVAI:** What do you mean by ought to?
- 2 **ABHISHEK MANU SINGHVI:** It's an empowering thing.
- 3 **CHIEF JUSTICE BR GAVAI:** Ought to?
- 4 **ABHISHEK MANU SINGHVI:** Ought to means...
- 5 **CHIEF JUSTICE BR GAVAI:** Ought to means in simple English?
- 6 **ABHISHEK MANU SINGHVI:** Your Lordship may clarify one sentence and this is what it
7 means, then we are saying so. Ought to, My Lords, in the context of a prudence. The previous
8 line and the next line.
- 9 **CHIEF JUSTICE BR GAVAI:** Mr. Solicitor, please permit him to argue.
- 10 **ABHISHEK MANU SINGHVI:** :May not be mandatory followed by measure of prudence:.
11 Read it holistically, My Lords... "seek an opinion".
- 12 **CHIEF JUSTICE BR GAVAI:** Ought to, you are just skipping the word 'ought to'.
- 13 **ABHISHEK MANU SINGHVI:** No, no, I'm saying measure of prudence, ought to.
- 14 **CHIEF JUSTICE BR GAVAI:** So, you are directly going to seek an opinion. That is the word,
15 'ought to'.
- 16 **ABHISHEK MANU SINGHVI:** No, no. I am saying measure of prudence ought to, not
17 mandatory. Your Lordships' measure of prudence means your discretion, your option. I have
18 quoted it, My Lords, directly. Read the sentence, the whole structure. "May not be mandatory
19 is the first. Measure of prudence ought to."
- 20 **CHIEF JUSTICE BR GAVAI:** You read it further.
- 21 **ABHISHEK MANU SINGHVI:** Yes. "This is all the more necessary as there is no
22 mechanism at the State level for the Governor..."
- 23 **CHIEF JUSTICE BR GAVAI:** No, no, first complete that sentence.
- 24 **ABHISHEK MANU SINGHVI:** Yes.
- 25 **CHIEF JUSTICE BR GAVAI:** In respect of that...

1 **ABHISHEK MANU SINGHVI:** "We are of the considered view that although the option to
2 refer a Bill to this Court under 143 may not be mandatory, yet the President..."

3 **CHIEF JUSTICE BR GAVAI:** You don't skip any words while you are reading. Otherwise,
4 you will get a prompt from the Solicitor.

5 **ABHISHEK MANU SINGHVI:** I did not do it earlier and I'm not doing it now.

6 **CHIEF JUSTICE BR GAVAI:** You are doing it, therefore, we are warning you.

7 **ABHISHEK MANU SINGHVI:** "Yet, the President, as a measure of prudence, ought to seek
8 an opinion under the said provision in respect of Bills that have been reserved for the
9 consideration on grounds of perceived unconstitutionality. This is all more necessary as there
10 is no mechanism at the State level for the Governor to refer Bills to the Constitutional Courts
11 for their advice or opinion thereupon. Under the scheme of the Constitution, as we see it,
12 there's only one possible way for the Governor to ascertain the palpable Constitutionality of a
13 Bill for it... which is by way of reserving it for the consideration, who in turn is expected to
14 invoke 143. The Constitution is not a maze, but a labyrinth, although both may semantically
15 appear to be one and the same. Yet, there is a fine, but discernible difference between the two.
16 The difference lies in the fact that in a maze one may lose their way within the multiple
17 overlapping paths with the possibility of each of them leading to a dead end. However, in a
18 labyrinth, one eventually finds the way. And the process also comes out more enlightened."
19 So, if she wants enlightenment, of course she can come.

20 "Similarly, any questions emanating from Constitution or pertaining thereto such as
21 Constitutional vagaries of law must be uncovered through the foresightedness of our
22 Constitution. Whenever a Bill is reserved for the Governor, by the Governor for the President,
23 on the ground of patent unconstitutionality of the nature, wherein the exercise of discretion
24 by the Governor is permissible, the Constitution expects the President to be the soothsayer,
25 easing the things for the Governor. The invocation of the power of the reference in 143..."

26 **CHIEF JUSTICE BR GAVAI:** Where is the operative part, the direction?

27 **ABHISHEK MANU SINGHVI:** Yes. Para 20. Come to para 20. Para 20.

28 **CHIEF JUSTICE BR GAVAI:** Please read it.

29 **ABHISHEK MANU SINGHVI:** Yes. 12575. Para 20.

30 **CHIEF JUSTICE BR GAVAI:** Yes, please read.

1 **ABHISHEK MANU SINGHVI:** "Whenever in exercise of the powers under 200, a Bill is
 2 reserved for the consideration of the President on grounds of patent unconstitutionality that
 3 are of such a nature so as to cause peril to the principle of representative democracy, the
 4 President must be guided by the fact that it is the Constitutional Courts which have been
 5 entrusted with the responsibility of adjudicating upon the question of Constitutionality and
 6 legality of an Executive or Legislative action. Therefore, as a measure of prudence, the
 7 President ought to make a reference to the...

8 **CHIEF JUSTICE BR GAVAI:** Ought to make a reference?

9 **ABHISHEK MANU SINGHVI:** Ought is there, My Lords. Your Lordships... may I say it
 10 straightaway. It may take no point, not a minute of Your Lordships' time...

11 **CHIEF JUSTICE BR GAVAI:** If you considered that then that's the end of the matter.

12 **ABHISHEK MANU SINGHVI:** I said that. I started by saying so.

13 **CHIEF JUSTICE BR GAVAI:** Then why unnecessarily have a...

14 **ABHISHEK MANU SINGHVI:** Because I wanted to say that... my reading of this is also
 15 that is an option given, which Your Lordships has now clarify. Your Lordships has now clarify.
 16 Matter ends.

17 **CHIEF JUSTICE BR GAVAI:** And this observation that... anyways let's not go into that.

18 **ABHISHEK MANU SINGHVI:** Para 141 is a similar sentiment in 1978 Special Courts Bill.
 19 It's not just a Division Bench practically out of nowhere. A Constitution Bench at 141 had a
 20 similar sentiment. Your Lordships should know the entire history in a Constitutional
 21 reference. See what they say. "It may not be necessary or even advisable to adopt such a course
 22 in all references under 143. But if in some it becomes expedient, as in, My Lords, [UNCLEAR]
 23 case, I think it saves a lot of public time mentioned, remove any tactical lacuna, etc." That's
 24 an option given to Your Lordships. Now, come to questions, page 140. 10, 11, and 13 dealt with
 25 together. Page 140, 10, 11, and 13. 10 is the 142 Question. 11 is framed at 140, is a law by the
 26 State, a law enforced without the assent of the Governor. And 13 is, "Do the powers of the
 27 Supreme Court under 142 is limited to matters of procedural law etc." Now, this is important.
 28 142 has been misunderstood. It is, in fact, one of the few Articles which passed without
 29 discussion as a clear power entrusted to the body, which had maximum trust, accepted by all,
 30 without controversy. Two amendments were moved... two amendments were cited, never
 31 moved, never moved. I'll come to that. 142, I'll just read through it.

1 Para 145. "142 empowers the Supreme Court with unfettered, limitless, and self-restrained
 2 powers..." Mark the word self-restrained. When I say, limitless, it doesn't mean no self-
 3 restraint. "...to do complete justice in any matter or cause, considering the very wide ambit,
 4 the same is used sparingly and only in those cases where it is necessary to do complete justice.
 5 The power is one of self -restraint. Ordinarily, it cannot circumvent and disregard the statutory
 6 provision governing a field with the exception of doing substantive justice." Now, My Lords,
 7 this is five judges in the Supreme Court Bar Association. Just read that. "The very nature of
 8 the power must lead to the Court to set limits for itself within which to excise those powers.
 9 And ordinarily, it cannot disregard a statutory provision covering a subject, except perhaps to
 10 balance the equities between the conflicting claims of the litigating Parties by ironing out the
 11 creases in a cause or matter before it. Indeed, this Court is not a Court of restricted jurisdiction
 12 of only dispute settling. It is well recognised and established, this Court has always been a
 13 lawmaker and its role travels beyond mere disputes settling. It is a problem solver in the
 14 nebulous areas. But the substantive statutory provisions dealing with the subject of a given
 15 case cannot be altogether ignored".

16 Now My Lords, Para 147 is important. This was Article 118. Just note this, My Lords. "118 has
 17 virtually no discussion." I would say no discussion. Two amendments existed, never moved,
 18 and it became 142. "...unanimously adopted by the Constituent Assembly..." Read 147, My
 19 Lords, my note. "...without any debate or objection at all, implying that the framers of the
 20 Constitution deliberately and consciously intended to create a constitutional safety valve in
 21 the hands of this Court. So that the Court may not remain powerless or helpless to do complete
 22 justice. It is a insignia of the complete trust in the apex body which the entire... there are very
 23 few Articles which have passed, My Lord, without..

24 **CHIEF JUSTICE BR GAVAI:** So, in the facts of the case, this is timeline under 142 to
 25 complete this. Can it lay down a straightjacket formula, for exercise of the powers by the
 26 Governor and President, while exercising 142?

27 **ABHISHEK MANU SINGHVI:** Suppose, My Lords... I'm just coming here. Suppose, Your
 28 Lordship has a statute, forget a Constitution, which indirectly infringes. My Lords may have a
 29 rethink whether you'll pass a direct order under 142 touching that statute. Suppose, My Lord,
 30 has a clear implicit in some other Article that Your Lordships should not touch 200 with a time
 31 limit. It's inexorable. Your Lordship may not use 142. Barring that, My Lord, this is a question
 32 not created by us. This is a question referred by the President, by the Government. Is there a
 33 fetter on Your Lordships in 142, in such a situation, is the question. I have not referred the
 34 question. This question is raised to create another limitation of some kind.

- 1 Now, My Lords, kindly come to 149. Now, this is an interesting judgment, which is when there
2 are two Constitutional provisions clashing, 142 and another existing provision. This is very
3 interesting, My Lords. Your Lordship has gone to the extent of saying when 142 and a provision
4 are clashing, when the matter is sub judice, 142 will prevail. Just see that, two minutes.
- 5 **CHIEF JUSTICE BR GAVAI:** How much time will you take on this?
- 6 **ABHISHEK MANU SINGHVI:** 15-20 minutes after lunch, My Lord, I will finish.
- 7 **CHIEF JUSTICE BR GAVAI:** All right, we'll begin at...
- 8 **ABHISHEK MANU SINGHVI:** Oh! I see. I didn't notice, I am sorry.
- 9 **CHIEF JUSTICE BR GAVAI:** You are likely to take 10-15 minutes.
- 10 **ABHISHEK MANU SINGHVI:** Obligated.
- 11 **CHIEF JUSTICE BR GAVAI:** You have two more days left. I will adjust one and half hour
12 to each day to the Learned Solicitor...
- 13 **ABHISHEK MANU SINGHVI:** Two and a half days more.
- 14 **CHIEF JUSTICE BR GAVAI:** No, one and half hours. So, two and half days will include
15 today.
- 16 **ABHISHEK MANU SINGHVI:** Today is the second day...
- 17 **CHIEF JUSTICE BR GAVAI:** Today is the second day. Two more days and whatever time
18 you took, one hour or one and a half hours...
- 19 **ABHISHEK MANU SINGHVI:** I took one and a half hours, exactly.
- 20 **CHIEF JUSTICE BR GAVAI:** We'll compensate for that.
- 21 **ABHISHEK MANU SINGHVI:** That will be the third day afterwards, which will be one and
22 a half hours extra. We have enough time, My Lords.
- 23 **CHIEF JUSTICE BR GAVAI:** We will curtail the time from the Rejoinder from that.
- 24 **ABHISHEK MANU SINGHVI:** Your Lordship is now acting like the American Courts.

1 **CHIEF JUSTICE BR GAVAI:** Yes, document?

2 **ABHISHEK MANU SINGHVI:** Page 142, para 149. The larger page is 621. The Volume is
3 2.2.

4 **JUSTICE VIKRAM NATH:** Page 142, para 149?

5 **ABHISHEK MANU SINGHVI:** Correct. 149: *Perarivalan*, My Lords. "Inordinate, delay
6 on the part of the Governor to exercise his powers of remission under 161 for more than two
7 years, even after receiving a recommendation from the State Cabinet, necessitated the
8 Supreme Court to interfere under 142." So, this is one of the delay case intersecting with 142.
9 "Exercising their power, the Court held that the prisoner had demanded or had deemed to
10 serve the sentence and granted him remission on grounds of extreme delay, resulting in
11 deprivation." Now this bill has come down to... It's a three-judge bench... come down to the
12 lower part of the page...

13 **CHIEF JUSTICE BR GAVAI:** I'm party to it.

14 **ABHISHEK MANU SINGHVI:** Your Lordship has got it. It's a three-judge bench. "Given
15 that his petition under 161 remained pending for 2.5 years following the recommendation of
16 the State Cabinet for remission of his sentence and continues to remain pending for over a
17 year, since the reference by the Governor, we do not consider it appropriate to remand the
18 matter for the Governor's consideration. In the absence of any other disqualification, the
19 exceptional facts and circumstance circumstances exercise the power under 142 we, directed
20 the appellant is deemed to have served the sentence." "Deemed to have served the sentence"
21 In *Kuldeep*, My Lords...

22 **CHIEF JUSTICE BR GAVAI:** This is again an individual matter.

23 **ABHISHEK MANU SINGHVI:** No, but individual matter... I want to say one thing. If Your
24 Lordship were to limit time limits for individual cases, it will be in consider of this purpose. In
25 fact, the correct way is to give a timeline.

26 **CHIEF JUSTICE BR GAVAI:** No, there could be different factual consideration before the...
27 as per the...

28 **ABHISHEK MANU SINGHVI:** No, My Lords. What it will mean is... Correct. But, My
29 Lords, in the case of a constitutional exercise of power under 200, 201, what it will mean is,
30 we're talking only 200, 201. I have to travel either up the ladder or to the Supreme Court. The

1 process of Notice Counter Rejoinder in individual cases will itself take at least a year or six
 2 months, in some cases, more than a year. Your Lordship's original timeline, which has already
 3 been violated, after which I'll come to the Court. Case-to-case will not solve this problem. In a
 4 general case of 200, 201, keep that in mind, My Lords. These are bizarre... for example, My
 5 Lords, this was case in **Kuldeep Kumar** was a case wherein a Mural election... I had occasion
 6 to assist the Court, My Lords. The returning officer can be seen on the video looking over his
 7 shoulder to see what to do with the vote. This is that case. So, Your Lordship deals with
 8 individual cases also. But a 200, 201 necessitates a general timeline, whatever it be, because it
 9 is not that Your Lordship's intention that I keep coming back every time to Your Lordships in
 10 individual cases.

11 **CHIEF JUSTICE BR GAVAI:** What happens if the timeline is not followed?

12 **ABHISHEK MANU SINGHVI:** My Lords, there is always the case. Your Lordship's arms,
 13 ears and power is large enough to see that it is followed. That's the first answer. There are
 14 always cases below, My Lordship knows aberrations. If Supreme Court's, My Lords, timeline
 15 is not followed...

16 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** We lay down the timeline.

17 **ABHISHEK MANU SINGHVI:** Yes.

18 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** And then, my brother asked a very
 19 the correct question.

20 **ABHISHEK MANU SINGHVI:** Yes.

21 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** So, then what? What will happen? If
 22 it is an administrative order, if, for non-compliance, it might becomes invalid.

23 **ABHISHEK MANU SINGHVI:** No.

24 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** What is to be done in the case...

25 **ABHISHEK MANU SINGHVI:** That's why, that's why.

26 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Flexibility provided as soon as
 27 possible is a constitutional bound, but when a matter goes to the Court, somebody says that
 28 large time has already been taken, then it becomes an individual list. There, the Court will
 29 exercise any kind of power, even 142 to power individuals.

1 **ABHISHEK MANU SINGHVI:** Correct.

2 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** But to say that it is set a time limit
3 purpose, provision is the difficulty...

4 **ABHISHEK MANU SINGHVI:** Correct. Now, Your Lordship is not dealing... My Lord is
5 not dealing in those cases with a standard paradigm. 200, 201. 200, 201 is a structure. First
6 come as assent, then return, then first proviso, then Presidential reference. A general timeline
7 is amenable to the structure of 201 is the first answer. 2, the second answer is, without a
8 general timeline, My Lord...

9 **CHIEF JUSTICE BR GAVAI:** A lot depends on the...

10 **JUSTICE VIKRAM NATH:** The first two amends the Constitution basically to incorporate
11 all these timelines into the provisions of section 200 and 201. Otherwise, you come with your
12 individual cases if you have a problem, we'll deal with it accordingly.

13 **ABHISHEK MANU SINGHVI:** Therefore, we come back to the six arguments in my
14 timeline section.

15 **CHIEF JUSTICE BR GAVAI:** In an individual case, a particular person agreed on a
16 particular party agreed, we can go on Article 226 also.

17 **ABHISHEK MANU SINGHVI:** Of course, it can. I am saying, My Lords...

18 **CHIEF JUSTICE BR GAVAI:** Therefore, taking down a particular... There could be a
19 different exigencies, there are different situations warranting different timelines for different
20 enactment, but then providing a fixed timeline.

21 **ABHISHEK MANU SINGHVI:** Now, My Lords, let me answer that. Your Lordship is
22 dealing only with 200 and 201, actually, only with 200. 200's structure, the first answer is, is
23 completely amenable to timelines. Number two, My Lords is dealing with a contemporaneous
24 reality situation of huge delays, to have a person, then travel up the ladder or deal in the
25 Supreme Court is adding to the timeline and rendering the object when this whole exercise is
26 innovatory, that's answer number two.

27 Answer number three. Your Lordship has not asked... There has to be an amendment to the
28 Constitution. Of course. That's the ideal thing. All these examples I'm giving, purpose of
29 interpretation, teleological interpretation. *Manipur* case, *Telangana* case are cases where
30 in the unoccupied silences of the Constitution, Your Lordship felt the necessity to intervene.

1 **CHIEF JUSTICE BR GAVAI:** There also, we did not lay down a particular timeline about
2 what all the things that would happen...

3 **ABHISHEK MANU SINGHVI:** Therefore, My Lords, I know...

4 **CHIEF JUSTICE BR GAVAI:** With the facts of that case.

5 **ABHISHEK MANU SINGHVI:** Right.

6 **CHIEF JUSTICE BR GAVAI:** Like in *Keisham*, the Court refused to follow *Rana*...

7 **ABHISHEK MANU SINGHVI:** So ,I'm answering individual questions individually, My
8 Lord.

9 **CHIEF JUSTICE BR GAVAI:** And in *Keisham*, the Court to fix a timeline of three
10 months...

11 **ABHISHEK MANU SINGHVI:** My Lord, first...

12 **CHIEF JUSTICE BR GAVAI:** So, also in *Telangana* case, we have to fix a timeline of three
13 months.

14 **ABHISHEK MANU SINGHVI:** So, My Lord, recognises that despite no Constitutional
15 Amendment, Your Lordship does fix timelines. Now, the question arises, is Your Lordships, in
16 the context of 200, should it be following a case-by-case approach? Which means a Bill-by-Bill
17 approach. A Bill-by-Bill approach, if My Lord was to follow in 200, then, My Lords, the very
18 object of putting a timeline will be defeated. The very object of putting a timeline will be
19 defeated. That is not so in those other cases. My Lord found a particular aberration in some
20 cases, My Lord dealt with it. In 200, the very object of doing a timeline... otherwise Lordship
21 need not do a timeline at all. The timeline object is to have a guidance which is adhered to, and
22 the answer to My Lord Justice Vikram Nath's question is, Justice Narasimha's supplementary
23 question, assume that Your Lordship gives a timeline and is not followed. Firstly, the correct
24 approach has been taken in the Division Bench and Your Lordship is not judging the
25 characters otherwise that there is a consequence attached to it, the consequence must be
26 deemed assent. If you don't follow a Supreme Court, the other consequence could be contempt.
27 A third consequence could be some other consequence My Lords. Now, we are not interested
28 here in discussing contempt against [UNCLEAR] especially with 361. But what is the object
29 My Lord is trying to achieve? My Lord is achieving an object that you are given by the
30 Constitution, a formal power of one return. You are given the power of reference. In both those,

1 three months is more than enough. If you still don't do it and you don't refer to 143... 143 is
2 not included in the time limit, and you don't refer to a President then a deemed assent...

3 **CHIEF JUSTICE BR GAVAI:** 143 *prima facie* appears to be, you are imposing upon a
4 President that whenever...

5 **ABHISHEK MANU SINGHVI:** No, no that...

6 **CHIEF JUSTICE BR GAVAI:** ...Whether the President does not have a machinery. The
7 President can take an advice of the Attorney General or maybe others to find out whether the
8 Constitution...

9 **ABHISHEK MANU SINGHVI:** No, I'm not saying that with great respect.

10 **CHIEF JUSTICE BR GAVAI:** But you are saying that, the President ought to take an advice
11 for...

12 **ABHISHEK MANU SINGHVI:** Chapter is over. I have conceded. I have clarified.

13 **CHIEF JUSTICE BR GAVAI:** You are again now referring to....

14 **ABHISHEK MANU SINGHVI:** No.. not at all. I am saying that the timeline is followed by
15 deemed assent, three months is enough for all the timelines given is the first answer. Now, if
16 three months are not enough, there is another option of referring to the President

17 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** The court also grants. Suppose court
18 might... Somebody might say that this limit is actually too small, you please revise it, give me
19 more time.

20 **ABHISHEK MANU SINGHVI:** Yes.

21 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** So then for that, because when we
22 prescribe it, time limit, then either of the Parties must come to us to relax, like a medical
23 college.

24 **ABHISHEK MANU SINGHVI:** My Lords...

25 **CHIEF JUSTICE BR GAVAI:** Every week we resume. How many letters from the district
26 cases or the trial courts that the court has fixed a trial. So much time for concluding the trial.
27 We get first letter due to A reason, B reason, we cannot conclude the trial within three months,

1 grant extension by six months. Again, on second occasion, we grant extension by nine months.
2 So..

3 **ABHISHEK MANU SINGHVI:** First of all, it has never deterred Your Lordships from
4 having a time limit nevertheless. It imposes discipline and immediacy on the situation.
5 Secondly, in extraordinary circumstances...

6 **CHIEF JUSTICE BR GAVAI:** It can always [INAUDIBLE] the Honourable Governor to
7 take action within a reasonable period.

8 **ABHISHEK MANU SINGHVI:** My Lords, reasonable period and as soon as possible has
9 been a Constitutional mandate for whatever 70 odd years. Your Lordship has seen the result.
10 Such cases have arisen when they're not followed.

11 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** As soon as possible is that, not good
12 enough?

13 **ABHISHEK MANU SINGHVI:** It is proved not good enough. It has proved not good
14 enough otherwise there'd be no case. My Lord is right. Why is this case come? Obviously did
15 not prove good enough.

16 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Then this time limit there persists.
17 You are assuming...

18 **ABHISHEK MANU SINGHVI:** No, My Lords, it will not.

19 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Time limit and this problem will
20 never...

21 **ABHISHEK MANU SINGHVI:** It will not because the deemed assent is the further follow
22 up, which the Bench has wisely thought of in advance.

23 **JUSTICE VIKRAM NATH:** Why only deemed assent? Then this court should actually enter
24 into the shoes of the Governor and see all the three options. A, B, C.

25 **ABHISHEK MANU SINGHVI:** That's not the same thing. It will not be the same thing.

26 **JUSTICE VIKRAM NATH:** Why only deemed assent?

27 **ABHISHEK MANU SINGHVI:** No, My Lords.

- 1 **JUSTICE VIKRAM NATH:** It would have been otherwise also?
- 2 **ABHISHEK MANU SINGHVI:** My Lords...
- 3 **JUSTICE VIKRAM NATH:** The options are there with the Governor. This court will
4 exercise any of the three options.
- 5 **ABHISHEK MANU SINGHVI:** Kindly see...
- 6 **JUSTICE VIKRAM NATH:** Either withholding or referring it to the President.
- 7 **CHIEF JUSTICE BR GAVAI:** Withholding or fall through.
- 8 **ABHISHEK MANU SINGHVI:** Kindly see. Would that be the same option? That may not
9 be of correct analogy for the simple reason.
- 10 **JUSTICE VIKRAM NATH:** Why should there won't be? That option remains that the only
11 assent with the President.
- 12 **ABHISHEK MANU SINGHVI:** Your Lordship, for example, suppose, My Lord, had taken
13 my chart of 20 Bills. Not that, My Lordships has taken it, and seen the delays.
- 14 **JUSTICE VIKRAM NATH:** Dr. Singhvi, again...
- 15 **ABHISHEK MANU SINGHVI:** Is Your Lordship going back to it?
- 16 **JUSTICE VIKRAM NATH:**... You are going back to the individual case, therefore what
17 Honourable Chief Justice also said, and what we are also trying to... Individual cases can
18 always be examined. You come here. Don't look here, three months have passed, four months
19 have passed, six months have passed. Nothing is being done by the Governor.
- 20 **ABHISHEK MANU SINGHVI:** Yes, My Lords may I say... these cases...
- 21 **JUSTICE VIKRAM NATH:** That there is an urgency in the matter.
- 22 **ABHISHEK MANU SINGHVI:** That was the way...these cases.
- 23 **JUSTICE VIKRAM NATH:** Either the Governor will respond, and say that this is the reason
24 why...
- 25 **ABHISHEK MANU SINGHVI:** That... that..

- 1 **JUSTICE VIKRAM NATH:**... this is not being done or...
- 2 **ABHISHEK MANU SINGHVI:**... that...
- 3 **JUSTICE VIKRAM NATH:**... the Court will consider what to do.
- 4 **ABHISHEK MANU SINGHVI:** That was the way the case...
- 5 **JUSTICE VIKRAM NATH:** Examine the Bill and accordingly take a decision.
- 6 **ABHISHEK MANU SINGHVI:** That was the way the cases were born, the *Tamil Nadu*
7 and the *Kerala* cases came in that fashion. It is found that this, this inordinate delay is
8 repetitive and demi...
- 9 **JUSTICE VIKRAM NATH:** Correct, so 142 can be exercised in individual cases, where
10 necessary.
- 11 **ABHISHEK MANU SINGHVI:** No, My Lords kindly see in...
- 12 **JUSTICE VIKRAM NATH:** Why do you want to [INAUDIBLE] this Constitution.
- 13 **ABHISHEK MANU SINGHVI:** If Your Lordship starts exercising this in individual cases
14 of 200, then the very purpose of timeline itself is wrong. There's no point exercising it, because
15 the time by which Your Lordships mandamus comes, worst still, if it's a 226.
- 16 **JUSTICE VIKRAM NATH:** No, with Counsels' pressure you will get your decision in two
17 months, three months, yes.
- 18 **ABHISHEK MANU SINGHVI:** No, I think My Lord is not in his *errata*. My Lord is not in
19 *errata*.
- 20 **JUSTICE VIKRAM NATH:** And no State Government is come here to engage...
- 21 **ABHISHEK MANU SINGHVI:** My Lord is not in *errata*.
- 22 **JUSTICE VIKRAM NATH:** Now they can come and engage with Dr. Singhvi, Mr Sibal, Mr
23 Subramaniam.
- 24 **ABHISHEK MANU SINGHVI:** My Lords, we are thankful for the left handed compliment..
- 25 **JUSTICE VIKRAM NATH:** Dr. Sankaranarayanan...

1 **ABHISHEK MANU SINGHVI:** My Lords it doesn't work in practice. Your Lordship is
 2 certainly on an Ivory Tower. Your Lordship knows the reality better than we do. All the things
 3 Your Lordship is saying don't happen at the ground, frequently don't. My Lord deals with this
 4 situation only when this kind of situation arises. Otherwise, after all, for all these years, My
 5 Lord did not have... Now lets

6 **JUSTICE VIKRAM NATH:** Not required.

7 **ABHISHEK MANU SINGHVI:** The real point, My Lord, is asking, is if we have done it. If
 8 I'm a reformulate My Lord's query and answer it? The fact that we have done it in five different
 9 paradigms which I am giving. We may do it in this case also, but in individual cases, not in the
 10 general timeline. That's the question put to be, all the rest of it I've answered, I can't reargue
 11 the whole thing. The answer to this question is simple. A paradigm of a 200 delay which is on
 12 the record of Legislative Assembly is from 1400, 1200, 1800 days, individual days, that's over
 13 three years, over five years is not met by either a 226, an individual Bill case. There are
 14 hundreds of Bills passed by the Assembly or a 32, if I'm lucky enough to sustain a 32 in Your
 15 Lordships Court. It takes minimum of a year. If it's a 226, takes a minimum of three years.
 16 Then what's the point? The Governor My Lord that has three years. You have then become a
 17 pocket veto, a killing of the Bill, a super Chief Minister and you are in effect, Your Lordships,
 18 timeline is not only too little, too late, it has no effect at all. So, Your Lordship's My Lords
 19 would have to decide that this case arose in a context which is nothing but, but seven different
 20 paradigms. I've given this **Kuldeep Kumar** is the 6th paradigm. Only thing is, Your Lordship
 21 dealt with that case it doesn't at all mean that Your Lordships can't give a general timeline.
 22 That's the submission. And My Lords the basic argument is that Your Lordships would be
 23 defeating the very object for which Your Lordships is undertaking this exercise. The initiative
 24 by My Lords to give a timeline even in that individual case, will be defeated if it is limited to
 25 individual cases.

26 **JUSTICE VIKRAM NATH:** [INAUDIBLE].

27 **ABHISHEK MANU SINGHVI:** Now, **Kuldeep Singh**. I have dealt with **Rajendra Rana**
 28 was My Lords another case which was mentioned when I was arguing in the pre-lunch session.
 29 The Speaker is a *persona designata*. "Only the person who is the Speaker can decide Tenth
 30 Schedule." This is not the timeline case, it's an interesting case. The speaker is a *persona*
 31 *designata*. Nobody but him can decide the case. So technically, Your Lordships, must remand
 32 back, and remand back by a provision of the Tenth Schedule, which is not a statute, it's a
 33 Constitution. "My Lord said no. We exercise 142 and we decided."

1 **CHIEF JUSTICE BR GAVAI:** Again that is an individual case.

2 **ABHISHEK MANU SINGHVI:** That's true... I...

3 **CHIEF JUSTICE BR GAVAI:** For finding that we have to check our history.

4 **ABHISHEK MANU SINGHVI:** My Lords, individual case, I've answered the justiciability.

5 **CHIEF JUSTICE BR GAVAI:** There are two petitions? First one for disqualification on the
6 round of defection, and there is the second one was on the ground of split. The High Court, the
7 Speaker first decides the split, without deciding disqualification. The matter goes before the
8 High Court. One remand. Second remand, then it goes before a Full Bench. The Chief Justice
9 takes a different view. The other two Judges take a different view, then the matter comes to
10 the Supreme Court. Two months are left and the very fact that the Court finds that the letter
11 addressed by those 13 persons that we are supporting Mr. Mulayam Singh to form the
12 Government, itself is sufficient enough to encourage disqualification. And, therefore, exercises
13 143. It doesn't say that hereinafter, in all matters, the Speaker shall decide the matter in three
14 months.

15 **ABHISHEK MANU SINGHVI:** That point is well taken, My Lords. I've answered it to the
16 best of my ability already. And, let me add, Justice Joseph's judgment in the Election
17 Commission case is an example of a general timeline, in addition to what I've answered. I have
18 said that a general timeline is the most appropriate response to a 200 structure. I have said
19 that without giving a general timeline, the very object of Your Lordship's giving any discipline
20 of time is defeated, if Your Lordship ask me to go to 226 or 32. Those are the two answers I've
21 given. The third answer is at page 594. **Anoop Baranwal**, which My Lord has noted, where
22 the Learned Judges gave a scheme for selection, that's a substitute for timelines, a counterpart
23 for a timeline, saying that there is no occupied field. **Anoop Baranwal**, at page 594, page
24 115, internal.

25 The fourth answer is this. If Your Lordship, My Lords, were to consider not giving a timeline
26 except in individual cases. It will mean that all the principles of providing a teleological
27 interpretation, a purposive interpretation for the contemporary reality, it has to be general. A
28 contemporary realities and felt necessity has to be a general [UNCLEAR]. My Lords, the
29 answer cannot be that Your Lordship will wait for timelines which will exceed... My Lords,
30 Court delays are endemic in this country. Supreme Court is the fastest Court. To get a final
31 decision in matters like this, My Lords, it will not take less than a year, realistically let's say,
32 six months, seven months. Before that, the time which has kept it back is already held. Seven

1 months is supersonic speed. I did the **Punjab** case. I did the other two cases. It didn't take
2 less than that.

3 So, therefore, the entire purpose of timeline goes. They are the only five answers as to why,
4 Your Lordships, should not do the case-by-case. There is no 6th answer. If Your Lordship will
5 be looking for a judgment which gives a timeline generally in a Constitutional matter, the
6 closest is the Election Commission matter. **Anoop Baranwal**, at page 115. And **Keisham**
7 gives it... My Lord is saying, is an individual case, that's the whole point. My Lord says is
8 individual case.

9 **KAPIL SIBAL:** The court gives directions in three months' time. That's what he is saying
10 when ...

11 **ABHISHEK MANU SINGHVI:** So, across, My Lords, Tenth Schedule, where Your
12 Lordships came again, it can be distinguished. It's a Tribunal.

13 **CHIEF JUSTICE BR GAVAI:** Tribunal and all the complementary that the Speaker does
14 not enjoy the immunity under the Amendment of 112.

15 **ABHISHEK MANU SINGHVI:** The three-month guideline is a general norm for Tenth
16 Schedule after the judgment. You may not follow it, the consequence is not given.

17 **CHIEF JUSTICE BR GAVAI:** There are only two cases. **Keisham** and **Telangana**.

18 **ABHISHEK MANU SINGHVI:** No. I'm coming to the... First case is.

19 **CHIEF JUSTICE BR GAVAI:** That is not... Neither **Keisham** laid down. On the contrary,
20 in **Telangana**, we hold that it is high time that the Parliament should revisit. It is again within
21 the domain of the Parliament too.

22 **ABHISHEK MANU SINGHVI:** Therefore, My Lords, a combination of a timeline coupled
23 with a consequence is the best answer for the felt necessity of the time. Now, My Lords, page
24 152 is 145, is Article 145 at page 152. 155, the short answer is, it lasts from 152 to 159. That, My
25 Lords, only those substantial questions of law which are not referred... sorry, which are not
26 decided may be referred. Not if it is decided, is the real answer at para 155 at page 152.

27 My Lords, in this **Abdul Raheem**, they say that, "A substantial question as to interpretation
28 ceases to be that if it is already decided." If it is already decided, it ceases to be a referable
29 question. And bottom of page 153, "It is clear that no substantial question of law as to the
30 interpretation arises in the present case as the very question raised has been decided by a

1 Bench of this Court consisting of five judges." So, there is no question of reference if Your
2 Lordship finds it decided.

3 **CHIEF JUSTICE BR GAVAI:** So, the decision by two judges of this Court.

4 **ABHISHEK MANU SINGHVI:** That's the next para, that's coming. Next page. Nobody is
5 saying it's final, My Lords. It can be referred by the same Bench. I am answering the question.
6 The same bench need not refer it where it feels, which it has done here, that is decided. I'm
7 saying there's no error. They can refer it. A bench always refers it Your Lordship or in a fresh
8 case X versus Y. The same question decided in A and B can be referred.

9 **JUSTICE VIKRAM NATH:** Mr. Singhvi.

10 **ABHISHEK MANU SINGHVI:** Yes.

11 **JUSTICE VIKRAM NATH:** Just one minute. Coming back to the previous question that we
12 were deliberating upon.

13 **ABHISHEK MANU SINGHVI:** Timeline.

14 **JUSTICE VIKRAM NATH:** Timeline. Now the consequence of the timeline have been
15 provided, that there should be deemed assent. So the assent is granted by the court. Now, that
16 when a Bill is granted assent it becomes law. That can be challenged on the ground of being
17 ultra vires or whatever be the provision.

18 **ABHISHEK MANU SINGHVI:** Yes.

19 **JUSTICE VIKRAM NATH:** That will again come to the court.

20 **ABHISHEK MANU SINGHVI:** It will come on the merits.

21 **JUSTICE VIKRAM NATH:** If at all you grant assent...

22 **ABHISHEK MANU SINGHVI:** It will come on the merits My Lords nothing to do with
23 Lordships' assent.

24 **JUSTICE VIKRAM NATH:** No, no.

25 **ABHISHEK MANU SINGHVI:** Deemed assent is a process.

1 **JUSTICE VIKRAM NATH:** Just a process. So this court will not be part of the Legislative
2 process and then that deemed assent can be challenged by way of writ petition independently.

3 **ABHISHEK MANU SINGHVI:** May I answer that? One, Your Lordship is in no way part
4 of the Legislative process. By judicial decision. Your Lordships would have held if Your
5 Lordship upholds a timeline with a consequence of not following a timeline,

6 **JUSTICE VIKRAM NATH:** Yes.

7 **ABHISHEK MANU SINGHVI:** Which is a judgment of a court, a law of the land under 141,
8 142, 143.

9 **JUSTICE VIKRAM NATH:** Correct.

10 **ABHISHEK MANU SINGHVI:** 141, 142. One minute. Second answer, after having so given
11 a judgment on the law, today it's a Division Bench judgment, tomorrow it will be a five judge
12 bench judgment on some of these questions. Your Lordship doesn't whisper a word about the
13 merits of a Bill. In this entire adjudication or in that adjudication, not a word, is it
14 Constitutional or unconstitutional. My Lord is fully empowered...

15 **JUSTICE VIKRAM NATH:** [INAUDIBLE]... then the option which the Governor has A, B
16 and C in the substantive provision of 200.

17 **ABHISHEK MANU SINGHVI:** Yes.

18 **JUSTICE VIKRAM NATH:** Is not exercised at all.

19 **ABHISHEK MANU SINGHVI:** No, it is exercised.

20 **JUSTICE VIKRAM NATH:** By whom?

21 **ABHISHEK MANU SINGHVI:** No, My Lords with respect..

22 **JUSTICE VIKRAM NATH:** Because...

23 **ABHISHEK MANU SINGHVI:** He has not exercised in three months...

24 **JUSTICE VIKRAM NATH:** No, no at time, therefore it is deemed assent.

25 **ABHISHEK MANU SINGHVI:** In that case then Your Lordship will have to say that he can
26 hold it back as much as he likes.

1 **CHIEF JUSTICE BR GAVAI:** That's a different question.

2 **ABHISHEK MANU SINGHVI:** There are only two options.

3 **CHIEF JUSTICE BR GAVAI:** That's a different question.

4 **ABHISHEK MANU SINGHVI:** Yes.

5 **CHIEF JUSTICE BR GAVAI:** The question is whether a general timeline could be... while
6 we exercise the powers under 142.

7 **ABHISHEK MANU SINGHVI:** As I understand in My Lords Justice Vikram Nath's
8 question is little different My Lords. That question of Lordship is...that's one part. My Lords
9 question is..

10 **CHIEF JUSTICE BR GAVAI:** The learned brother's question is with regard to the deeming
11 assent.

12 **ABHISHEK MANU SINGHVI:** Two things. My Lord is asking two questions. You
13 becoming a part of the Legislative process and then you judging the Act. That's My Lords'
14 question. Those are completely non-contradictory. My Lord is becoming nothing but a part of
15 the judicial process, not a Legislative process by holding that timelines are necessary by
16 whatever purposive interpretation, teleological, fell necessities, whatever. Having so held and
17 the timeline being expired and deemed assent happening, My Lord will look at something
18 totally different - the merits of the Bill if and when challenged. There is no contradiction. And
19 My Lord doesn't mix up any separation of power issue. Nothing.

20 **CHIEF JUSTICE BR GAVAI:** Alright.

21 **ABHISHEK MANU SINGHVI:** Now this My Lords is the Section on 145. In fact, ironically,
22 one of the Bills in the **Tamil Nadu** list, which was part of the other Division Bench is directly
23 under challenge before My Lords' Justice Vikram Nath's bench, where I am arguing. Your
24 Lordship knows. Your Lordship gave a date last week, some other date about some university
25 UGC, Mr. Mehta is opposing. So that exercise My Lord does is not part of a judicial function
26 which happened already. That's the different judicial function.

27 Now, last point, an important point. Come to page 160. So My Lords answer to 145 is, there is
28 no question, if the Division Bench thinks that it is necessary, it may refer. It is not obliged to
29 refer if it finds it's already decided, and a second bench can always refer the same question.

1 But leave that and come to the last and most important point, which will take 5-10 minutes.
2 160. Now first see the question. This question has been reformulated by Mr. Mehta.

3 **JUSTICE VIKRAM NATH:** Page?

4 **ABHISHEK MANU SINGHVI:** 160 and it is not the President's question at all. Please one
5 minute. 160. This is the President's question at 160. May I? Does My Lord have 160?

6 **JUSTICE VIKRAM NATH:** Yes.

7 **ABHISHEK MANU SINGHVI:** "Does the Constitution bar any other jurisdiction of the
8 Supreme Court to resolve disputes between the Union Government and State Governments,
9 except by way of a suit under 131."

10 So, My Lords I am going to argue it both ways. It doesn't directly say it does 32, barred by a
11 State. But I am assuming he's right. I'm arguing it both ways. I'm assuming that he's right to
12 raise the question. I'm saying textually, as put, it is not raised. I'm arguing that as a point also.
13 So first, just give me three or four minutes on 131, then I'll come to 32. So first, just see 131.
14 "The present..." so... only I'm on 131. "The present question does not and cannot arise as 200
15 cannot be brought in the scope of dispute between the Government of India, and one or more
16 States or between two or more States. For a dispute to be construed as a dispute under 131,
17 such dispute has to be between the Government, and one of our State or two more States... "
18 This is not so much where the Governor is involved. That's the short answer. Then My Lords
19 I've quoted in other paras: Ornamental functionary, guide, philosopher and friend. Come to
20 My Lords 165.3 at 161. Justice Krishna Iyer in **Maru Ram**, "Because the President is
21 symbolic..." I'm only answering 131 My Lords. "...Central Government is a reality even as the
22 Governor, is the formal head and sole repository of the executive power, but is incapable of
23 acting except on, and according to the advice of his Council of Ministers." Then My Lords, 162
24 : "The Constitutional conclusion is that the Governor is but a shorthand expression for the
25 State Government and the President is an abbreviation for the Central Government." My Lords
26 the next **Singhal's** case, it's a Constitution Bench. "The Governor has a dual role, the first is
27 there of a Constitutional Head of the State, bound by the advice of his Council of Ministers.
28 The second is to function as a vital link between him and the Union Government, and the State
29 Government. In certain special emergency situations, he may also act as a Special
30 Representative of the Union Government." He is not Union Government. He is not State-
31 versus-State. He's not State versus Union, that's the point being made here. "He's required to
32 discharge the functions related to his different roles harmoniously. He's not an employee of
33 the Union Government, nor the Agent of the Party in power, nor required to act under dictates

of Political Parties, etc." Then ***State of Karnataka*** points out My Lords. "The Article is attracted only when the Parties to the dispute are Government or one or more States." And then My Lords, "We quote that..." I'll skip that My Lords, just see the next page for a minute. "The Article is a necessary concomitant..." 164 My Lords. 164. "Article 131 is a necessary concomitant of a federal or a quasi-federal form of Government, and it is attracted only when the Parties to the dispute are the Government of India or one or more States. This is a limitation as to Parties. The other limitation as to subject matter flows from the words 'if and in so far as the dispute involves any question of which the existence or extent of a legal right debates' " So these two concurrently have to satisfy 131. It is certainly not satisfied as to Parties in the present case. Then, 166 My Lords, where the ***State of Karnataka*** in another para is quoted. "In an ordinary Civil Suit, the rejection of a right asserted by the Defendant cannot correspondingly, and with its own force establish the right claim by the Plaintiff. Proceedings under 131 are adjudicatory of the limits of Constitutional power... " Middle of that page. "The competition in such a proceeding is between two or more Governments, either the one or the other possesses the Constitutional power to act. A demarcation and definition..." So, it's only State and Government and Governor will not fall is in brief is what I'm saying here My Lords. I leave this, I've come to the end.

Now, My Lords, I am answering the question. Why Article 32 will lie, though it is not quite so framed. I reread the question in favour of Mr. Mehta to say, that since 131 can lie, other forms, like 32, are excluded. I don't think that's the question, but I'll re-read it against myself. The answer is in a very short two-page note in Volume 2.3, which I filed after, the matter argued in front of My Lords. 2.3, I'll just show you a two page My Lord then I'm done. My first submission is the Article's focus is not on 32 at all. Sorry, the queries focus is not on 32 at all, Your Lordship need not answer it. Your Lordship need not answer it. Second, 131 doesn't bar.

Now the third answer on 32. Come to page 1, para 2, ***Murugan's*** case. Page 1, para 2. May I read My Lords? "On the question of maintainability of the *writ* according to Learned Solicitor General, the same cannot be permitted to be raised in this reference. Since the said question was not raised, and considered in the order of reference reported as so and so." This My Lords note down is a *writ* by the ***Union of India***. This matter which Your Lordships is reading in my para 2, is a 32 *writ* by the ***Union of India***.

Then, the bottom of that same page. "Since the issue raised in the writ cannot be worked out by way of a suit under 131 and since the accused are private parties, the writ is the only remedy available."

Now, My Lord, just pause, 131 is not applicable to my case. Now, there is one Government and a Governor, I've come in 32, apply the analogy. Come to page 2 now, page 2. "Having considered the objections raised on the ground of one maintainability, having heard the respective Counsel on the said question, having regard to the nature of issues which have been referred, we are of the also convinced that answer to those questions involve substantial questions of law as to the interpretation of 72, 73, 161, 162." This is the second answer, My Lord. Substantial questions of law involved, Lordships should hold it to be maintainable, "as various entries as well as corresponding provisions. We do not find it appropriate to reject the reference on the technical narrow ground of maintainability" is answer number two.

Then, My Lords, this is a State filing of Article 32 is para 3. "In ***State of Uttar Pradesh***", where I believe Mr. Mehta appeared, "they filed a combined 32 plus 406." But 406 is a substantive provision, 32 is a modality. Modality was 32 only. "Transfer of accused from Punjab to Uttar Pradesh under 32." It is next page, 3. "It is submitted as a repetition filed by the State is certainly maintainable under 32 for the reason that the administration of criminal justice has bestowed upon the state on behalf of the victims of crime and also on the premise that a crime against a citizen is a crime against the State." I'm asking Your Lordships to underline, "Behalf of the victims of the crime and also on the premise that a crime against a citizen is a crime against the State." This is the larger *parens patriae* public interest jurisdiction. This is what I'm canvassing for My Lord's consideration as my submission.

This is the argument of the ***State of UP*** through Mr. Mehta. Not that there is any estoppel against you, I'm not suggesting at all, My Lords, just like there is none against me. To maintain the petition under 32, Learned Counsel placed reliance on ***Sriharan***. Next para. "It is further submitted, in any event this Court may invoke 142 for doing complete justice."

Now, My Lords, as in the written submissions... of course, they say in the next para that, "In as much as it is filed under 406, it is maintainable at instance of the State." Now 406 is a substantive provision for transfer, not the modality. The modality is 32 only. Now, My Lords, Mr... ***Uttar Pradesh's*** submission, "it is submitted in this Honourable Court in the aforesaid judgment..." Now, this is the written submission filed in that case by the State in Article 32, "Entertain the petition filed, they existed dispute between Centre and State, in the present case, state the dispute is between two states." It is submitted there exists no explicit or implicit bar for filing a petition under 32 by the State.

Then, My Lords, the most important concluding paragraph where I put it together on the concept and that is paragraph 7. May I read 7, My Lords? This is the overall conceptual part, then I'm done with the cases cited after that. "Further, the *parens patriae* doctrine empowers

1 the state government to be a custodian of the fundamental rights of its citizens, enables it to
 2 take all necessary steps to safeguard it. There are diverse facets through the submission. A Bill
 3 is the sovereign expression of the State acting in public interest for the welfare of its citizens.
 4 Secondly, when a State challenges egregious delays by the Governor, it seeks to promote public
 5 interest of each citizen of the State. Thirdly, this exercise inherently seeks to promote and
 6 protect the fundamental rights of each State resident and citizen. Fourthly, when the State so
 7 acts, it is acting for the collectivity of its inhabitants and additionally exercising *parens*
 8 *patriae*. Lastly, none of these facets would be excluded from Part 3."

9 The case for this is **Charan Lal Sahu**, My Lords. The first sentence is *parens patriae*. They
 10 start. And the next page, My Lords, is, "This Court also recognise the concept of persons relying
 11 on *parens patriae*." Then, My Lords, they completely discuss *parens patriae*, which I'll not
 12 read, but the entire jurisprudence is given and quoted by me overall, My Lords, five pages. I
 13 have underlined, My Lords. It saves time if I don't read it. But *parens patriae* is, My Lords,
 14 the jurisprudence explained, elaborated how it evolved, what are the limits. I certainly say, My
 15 Lords, that in view of para 7, the five reasons I've given them the four reasons I've given, you
 16 have a collectivity, My Lords, of public interest and *parens patriae*, which would make this
 17 petition, and indeed the state is otherwise remedy-less. This is not a 131 dispute. You always
 18 can say go in a 226, that's a different matter. But that is not the object Your Lordships. 226
 19 alternative does not bar your 32 in any manner. Your Lordship may never entertain 32. It
 20 never bars you. Extremely grateful My Lords, deeply obliged. I'll join in shortly My Lords.

21 **KAPIL SIBAL:** My Lords I'm appearing for the State of West Bengal, My Lords. I was to also
 22 appear for Karnataka, but if I do that, my learned friend will not get time to address Your
 23 Lordship. So I'm giving up My Lords, and will ask my learned friend to appear for Karnataka.
 24 My Lords may I just broadly tell Your Lordships what my submissions are going to be, because
 25 lots has already been said so we'll need to encapsulate our submissions, so that everybody gets
 26 a chance to argue.

27 My Lords, what is Your Lordships considering today? If you look at 200 and 201, the first
 28 question you have to ask yourself is, what's the nature of the power exercised by the Governor
 29 in 200? Is it Legislative? Is it Executive? What's the nature of the power exercised by the
 30 President in 201, when the matter goes to him for consideration? Is that on the aid and advice
 31 of the Council of Ministers at the Centre, or is it his personal power? Those are the two
 32 fundamental questions that Your Lordships will have to ask yourself. I'll assume for a moment,
 33 My Lords, that it's an absolute executive power. Let's assume against myself. So consider this,
 34 My Lords, the conundrum, which is a Constitutional conundrum that Your Lordship will have
 35 to face. A Legislature in a State is referenced to an item in List 2, say distribution of electricity

1 or an exclusive item in List 2 passes the Legislation. That's the will of the people, and that's a
 2 Sovereign act. So, Your Lordships will have to come to the conclusion to decide against me
 3 that that Sovereign act of the Legislature need not be implemented by the Executive; he can
 4 withhold it. So, for the first time in the history of Constitutional Law in this country, Your
 5 Lordships would hold that the will of the people need not be implemented because the
 6 Governor chooses to withhold to the Bill. It's a proposition My Lords which is unaccepted
 7 under any principle of Constitutional Law. It cannot be.

8 Why? Now let me give Your Lordship's why. If you look at the theme of the Constitution
 9 throughout in respect of the Executive chapter in relation to States or the Executive chapter in
 10 relation to Union, you will find that the Executive at, at no stage, has any Legislative power. If
 11 it comes to the Executive in the Union, My Lords, the President will act on the aid and advise
 12 of the Council of Ministers. President has no individual function. When it comes to the State,
 13 My Lords, the Governor will act on the aid and advice of the Council of Ministers. The
 14 Governor has no individual function. If at all the Governor has two functions, My Lords, which
 15 are somewhat different under the Constitution itself which is 356, but that's a
 16 recommendatory function, it's not a decisive function. The Governor will recommend that the
 17 functioning of the State is such that, that cannot function under the provisions of the
 18 Constitution. Who decides? The Government of India. Who decides, finally, whether that's
 19 right or wrong? Your Lordships. So, you have to address that question first, let's forget about
 20 Case Law. Fundamental Constitutional Law: 356 is one such power, 161 is Grant of Pardon,
 21 again, exercised on the aid and advice of the Council of Ministers, and 311(2) is another power
 22 311(2), inquiry is not necessary to dismiss a Government servant, because of the satisfaction
 23 of the Governor, again on the aid and advice. Give me one provision in this Constitution, one,
 24 that allows the Governor to exercise any power which thwarts the Legislation. We'll come to
 25 timelines later, but at the moment I'm not concerned. So, you have in 200, in a part of 200, a
 26 power to allow the Executive, namely the Governor, who doesn't have to act on the aid and
 27 advice of the Council of Ministers, he doesn't consult the Union Government because he has
 28 no right to consult the Union Government, but he will just withhold the Bill. Such a proposition
 29 is untenable from any stand point. Point number one.

30 Two, what choices does he have? Let's now assume My Lords, in my favour. I assumed against
 31 myself My Lords, and made my point. Let's assume in my favour that he has no power to
 32 withhold. Where do we go from here? He then has to either send it back. Now, Dr. Singhvi,
 33 made three alternative propositions on that, I'll not go into that for the moment. He has one
 34 possibility - to send it back, to say that you reconsider the Bill, or you pass the Bill with certain
 35 amendments. That's what's reflected in the First Proviso. Right, My Lord? And that has to do
 36 as soon as possible. Or, he sends it to the President for his consideration. That President means

1 the Government of India, not President in his personal capacity or her personal capacity.
2 That's the only two options he has.

3 Now, if he exercised the first option, namely, he sends it back. Let's assume he exercises that
4 option. He has to do it when? "As soon as possible." Please reflect on the word "possible". It's
5 not just "soon". What can a Governor have an impediment on, not to consider the Bill
6 forthwith? He has no impediment. He is holding a Gubernatorial office, the will of the
7 Legislature is reflected in that Bill has come to him. Certain DA allowances have to be given to
8 somebody, or that will be a Money Bill. But, if it's a Non-Money Bill, some, My Lords, in the
9 field of education, something has to be done. In the area of reservation, if Your Lordship
10 knows, under the Right to Education Act, and these are State Acts. Now, My Lords you can
11 reserve for certain categories of individuals My Lords. Supposing that the Governor... the
12 Government wants that children often should also be included in the reserved category,
13 children are often... I'll give an example My Lords. So, how long will the Governor had to take
14 for that? When you say 'as soon as possible', what would be impossible for the Governor to
15 hold it back? That too Your Lordships will have to consider. Forget about the timeline for the
16 moment, My Lords. Just look at the words of the Constitution. Timelines will come later, My
17 Lords.

18 Let's look at the other scenario, that the matter is sent to the President for consideration. Now,
19 what did the President do? "As soon as possible" doesn't apply to him?

20 **JUSTICE VIKRAM NATH:** Sending it to the President, there would be an advice of the
21 Council of Ministers?

22 **KAPIL SIBAL:** No, that's not my argument.

23 **JUSTICE VIKRAM NATH:** But we just wanted to know.

24 **KAPIL SIBAL:** Whether that's the argument...

25 **JUSTICE VIKRAM NATH:** Take that as whether it is to be sent to the President or not?

26 **KAPIL SIBAL:** Correct. I'll tell Your Lordships. I'll tell Your Lordships. My Lords, what will
27 happen in the process is that he feels that this may be repugnant.

28 **JUSTICE VIKRAM NATH:** Therefore, he is applying his mind?

29 **KAPIL SIBAL:** He has to, My Lords, I'm not following Dr. Singhvi's argument there. He has
30 to apply his mind.

1 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** But deal with that. He didn't advise
2 aspects of it.

3 **KAPIL SIBAL:** I'm sorry?

4 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** He didn't advise aspects of it and also
5 the aspect relating to discretion.

6 **KAPIL SIBAL:** I'll come to that.

7 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Governor first, because after
8 answering that question, then the second issue will arise that there is absolutely no discretion.

9 **KAPIL SIBAL:** Yes, My Lords. As far as the aid and advice is concerned, My Lords, when it
10 comes to the right of the Governor to send it back, there is inherent evidence by reading the
11 provision itself that he does in his capacity as Governor, feeling that it might be repugnant to
12 a Central Legislation.

13 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** That's his own call. That's not based
14 on aid and advice.

15 **KAPIL SIBAL:** It can't possibly be. It can't possibly be. That was the first alternative of Dr.
16 Singhvi's submission. That he suggested that everything has to be on the aid and advice.

17 **CHIEF JUSTICE BR GAVAI:** Normally a Bill, before it is presentable to the Legislative,
18 would come through the Cabinet.

19 **JUSTICE VIKRAM NATH:** Through the Governor.

20 **CHIEF JUSTICE BR GAVAI:** Before the Bill...

21 **KAPIL SIBAL:** I'm going to come to that. Right. I'm going to come to that, My Lords. That's
22 the second proposition, My Lords brought... At the moment, I'm not dealing with the article,
23 My Lords, we're just broadly giving Your Lordships the submission. Your Lordship is right,
24 My Lords, that's the other thing. The basic principle of Constitutional Law in matters of this
25 nature, when there is interaction between the executive and the Legislature is that, My Lords,
26 there must be a level of amity and cooperation to make the Constitution work. Your Lordships
27 sitting in this court has to ensure that you interpret the Constitution to ensure that it works.

28 **CHIEF JUSTICE BR GAVAI:** Correct.

1 **KAPIL SIBAL:** Not that it does not work. Not that the Governor says, I will not allow this to
2 go forward.

3 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** 75 years of Constitution.

4 **KAPIL SIBAL:** Exactly.

5 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It has worked. It is not as if it hasn't
6 worked.

7 **KAPIL SIBAL:** Exactly. right. My Lords, no principle of Constitutional law which allows a
8 breakdown of Constitutional machinery. There is no such principle of Constitutional Law.
9 These are fundamental, My Lords, that the court will... knows and looks at when deciding a
10 provision. So, My Lords, you can't have a situation where the Governor says, I just sit back,
11 don't want to do anything. What is to be done thereafter is a separate issue, My Lord. But if
12 you look at 200 carefully, you will find that the Governor will either send it back with
13 amendments, with suggested amendments, or he'll send it back for reconsideration. And then
14 the Legislature will then pass it, if it feels that it should be passed.

15 Now, if the first stage is on aid and advice of Council of Ministers that he sends it back, there's
16 a question if it will be passed, then. There's no question of 'if', the Legislature feels it should
17 be passed. That's what 200 says. So, there is inherent evidence in 200 itself that that little
18 exercise of power is by the Governor.

19 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** So what considerations weigh with
20 the Governor when he takes the decision to send it...

21 **KAPIL SIBAL:** My Lords, that's right.

22 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Or not to send it back?

23 **KAPIL SIBAL:** Correct. I appreciate that.

24 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** That's the pathology of decision
25 making as against that of an Executor.

26 **KAPIL SIBAL:** But that decision making is not adjudication.

27 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Our question is that, what troubling
28 us is that when he takes a decision of this nature, is it a logical syllogistic or a quote type of a

1 logic that he would follow or are there any considerations like deliberative, consultative, or
2 any other methodologies by which he will have to apply his mind to send it back?

3 **KAPIL SIBAL:** My Lords let's take an example. I appreciate what My Lord said. Let me take
4 an example. Forget the Governor, the President. Many a time Bill comes to then President My
5 Lords.

6 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** The President's position is
7 completely different. We're not at the President. We are on Governor's position.

8 **KAPIL SIBAL:** No, I am answering that. In the light of what My Lord has asked me, giving
9 you example because the President has taken the advice of the Attorney General on several
10 occasions, even if the Bill is with him.

11 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Yes.

12 **KAPIL SIBAL:** Correct. So similarly... Similarly he can take advice of the Advocate General
13 saying, this is what I feel, there's a problem with this. What do you think? He can do that. He
14 can take the advice of a private lawyer. The President does it. We've seen it in action My Lords.
15 The President is not exercising his personal... the President is just considering My Lords. He's
16 not just a rubber stamp ultimately.

17 **CHIEF JUSTICE BR GAVAI:** There have been instances where Senior Counsels have been
18 consulted.

19 **KAPIL SIBAL:** Yes. Yes. Therefore, My Lords asked me this question. The answer is simple.
20 He is not taking any decision. After all, he has a mind. He's the President. He's the Governor.
21 He has a mind of his own. He genuinely may believe that there is something that needs to be
22 addressed. He is not a decision making authority. He doesn't act as a judge. He can't reject the
23 Bill. He has no power to do that. He can't withhold it. He can either send it upstairs, My Lords,
24 or he can send it back to the Legislature.

25 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** You are only on the issue of
26 withholding?

27 **KAPIL SIBAL:** Yes.

28 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Are you only confined to
29 withholding?

1 **KAPIL SIBAL:** No, no. I'm saying withholding My Lords, my broad answer, and I'll take Your
2 Lordships through the details My Lord.

3 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** No, that's right.

4 **KAPIL SIBAL:** I am on the other one. Hold or cannot withhold. That question doesn't arise
5 of withholding, because he'll be overriding the will of the Legislature. It's anathema to the
6 Constitution. There's no question of withholding. The question is, if he is not withholding,
7 what then are his options? That's the point that I was trying to address at this point. His
8 options are either to send it to the President or send it back to the Legislature. Legislature,
9 with suggestions, right, by exercising a limited amount because it is "as soon as possible". By
10 exercising a limited amount of application of mind. Should I send it back or should I just give
11 an assent to it? And if he does send it back My Lords, the Legislature passes it and it's cleared.
12 That's the law.

13 Now, he sends it to the President. What's the focus there? What will the President do for his
14 consideration? That's the last line of 201 My Lords. What does that mean? Can he sit? Because
15 there the President is the Council of Ministers. There the President has no leeway like the
16 Governor does in 200. So can the Government of India sit on the Bill? It's the Executive again.
17 What principle applies to the Government of India? "As soon as possible". So, there is an
18 element of urgency. Why? Because the Legislature is Sovereign, and the Legislative Act of the
19 Sovereign cannot be withheld, must be passed as soon as possible. There's no impossibility in
20 dealing with it. So, if Your Lordship says "forthwith" that's enough. We don't have to say three
21 months, four months, six months, eight months. Forthwith. Because that's the nature of the
22 exercise. That's what... Now My Lord, the Chief Justice mentioned to me what happens, My
23 Lords. What happens in Parliament I've gone through it several times over My Lords. If a
24 department of the Government of India wants to introduce a Bill, what happens? The
25 department prepares a draft and circulates it to all the ministries who may be affected. If it's
26 something to do with fertilizers, they're circulated to the Ministry of Health, Ministry of
27 whatever, whatever, whatever.

28 And My Lords, then what happens is that after comments will come and then comments will
29 be collated, My Lords. Then ultimately some kind of Final Draft will be made and then it is
30 sent to the Ministry of Law. And then the Ministry of Law will look at it. And then, ultimately,
31 a Bill is drafted in its entirety, and then it goes to the Cabinet. Now, if the Bill has really no
32 problems with it, it'll pass. It'll be passed. But the Cabinet may think, no, this is a matter which
33 needs to actually go to a group of Ministers. Why I'm giving Your Lordships this? That this is
34 what happens, it's a collaborative exercise of the Executive, ultimately resulting in the

1 introduction of the Bill. Right? So that collaborative exercise is done by the Executive. So, it's
 2 not as if the Legislature is going to pass a Bill in relation to Foreign Affairs. The kind of
 3 examples My Lords that were given by the Solicitor. I can't understand this logic. My learned
 4 friend says, don't deal with facts in the cases that are before other courts or in these States. But
 5 I give you facts that I will deal with. He can't have it both ways. He's given assumptions. He's
 6 given any number of facts.

7 **CHIEF JUSTICE BR GAVAI:** He is generally...

8 **KAPIL SIBAL:** He's argued that My Lords.

9 **CHIEF JUSTICE BR GAVAI:** In fact, in such matters...

10 **KAPIL SIBAL:** 'In such matters' means what? Facts! He's now assuming a fact, creating a
 11 chimera, then arguing on logic that okay if this happens, what is the poor Governor to do? So,
 12 he can't have it both ways. He can't give examples of that nature which have not happened in
 13 the history of this Country, and of the Parliament and of the Legislature since independence.
 14 And those are the examples that he has given. And he made argument on the basis of that. He
 15 can't do that. If he is to argue it, he all must argue it bereft of such... Sorry if, I don't use a harsh
 16 words. 'Such example'. So, therefore, the President too, and the President here is the
 17 Government of India, must act and deal with the Bill as soon as possible.

18 Now, let's assume that my learned friend's argument is right, that the Governor acts in his own
 19 capacity. Because if Your Lordship knows the argument of 361 that is being made, and that's
 20 a very interesting argument. If you look at the judgments of the Court under 361, you will find
 21 this. When it comes to 356, the Governor doesn't have to be made a Party, because the Order
 22 is passed by the Government of India. So Government of India will defend the Governor. That's
 23 why you say 'Government need not be made a Party.' If it comes to 161, again the Governor
 24 need not be a Party. Why? Because your Order can be defended by the Government. If it comes
 25 to 311(2) again, the Governor is not a Party, because it'll be defended by the Government. But
 26 if it is the Government's own power, the Government cannot defend him. So *apropos* the
 27 debate that took place with Dr. Singhvi. If you were to challenge that Order, My Lords, the
 28 Governor will say 'I cannot be asked', and there will be no Government of India to defend him.
 29 So the 226 cannot be filed. If you hold that withholding consent is an absolute power of the
 30 Governor. It will lead to absurdity. It will lead to lack of function of the Constitution itself. My
 31 Lords this Constitution is genesis in history, but its alignment is with the future. And who
 32 decides the future of this Country? You five, in this case. The future of India is at stake, if you
 33 give such powers to the Governor. Because it will lead to these absurd situations.

1 And even 361 is wrongly read. If you look at 361 carefully and I'll come to that tomorrow, My
 2 Lords when I'll to deal with it. If you look at 361 carefully, you will find this. The first part of
 3 361 says that, he is not answerable. Then it goes on to say, but he can be impeached, he can be
 4 removed. And then the Proviso comes. The gravamen of 361 is to make sure that he will not be
 5 answerable to an Act. Just read 351 with me, it's very interesting, and it's not been interpreted
 6 like this ever before My Lords. If I may with Your Lordships' permission?

7 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Yes.

8 **KAPIL SIBAL:** "The President of the Governor or Rajpramukh of a State shall not be
 9 answerable to any Court for the exercise and performance of the powers and duties of his office
 10 offer any act done or purporting to be done by him in the exercise and performance of those
 11 powers and duties: provided that the conduct of the President may be brought under review
 12 by any Court, Tribunal or Body appointed or designated by other House of Parliament for the
 13 investigation of a charge under 61. Provided further that nothing in this clause shall be
 14 construed as restricting the right to a person to bring appropriate proceedings against the
 15 Government of India or the Government of the State." Which is 356, 311(2) and 161, where the
 16 Governor... Government will answer. But if it's the Governor alone, it can't... his proviso will
 17 not work.

18 "No criminal proceedings shall be instituted or continued." So, My Lords, Your Lordship sees
 19 removal provision is in the Proviso, criminal proceedings in the Sub-Article 2 and no process
 20 of arrest is against a Sub-Article 3. And no civil proceedings shall be instituted during his
 21 term", My Lords, if it's defamation or something like that, will not be done till the term is over.
 22 So, you have criminal proceedings, civil proceedings, to which is completely protected, but not
 23 for an official act, according to me, My Lords, not for an official act. Not for an official act, in
 24 which, My Lords, the Government of India can defend it.

25 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** *Rameshwar Prasad* looked into
 26 all that. *Rameshwar Prasad's...*

27 **KAPIL SIBAL:** Correct. But, My Lords, the true import of 361 is really immunity from
 28 personal attack. That's what it is. That's what really 361 is all about. He's answerable. In every
 29 respect, he is answerable. But answerable not in his personal capacity, but by the Government
 30 because it's the Government which actually takes the decision. But if you interpret 200 in this
 31 way, it will not operate. You'll not allow it to operate, My Lords. Because how will I file a
 32 petition against the Governor? But the Governor acts for my aid and advice, My Lords. So, who

1 will stand up for the Governor? Government of India can't stand up. Government of the State
2 can't stand up.

3 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Interestingly, there is no provision.

4 **KAPIL SIBAL:** It's very, very interesting, My Lords.

5 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Similar to Article 70... 71 if I'm not
6 wrong.

7 **KAPIL SIBAL:** No provision similar to 61. That's correct.

8 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** 61.

9 **KAPIL SIBAL:** Correct, correct, absolutely.

10 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** So, because the appointment is by the
11 Union Ministers, Legislature of the President.

12 **KAPIL SIBAL:** And, My Lords, look at his Oath of Office. Look at the Oath of Office of the
13 Governor. It is very interesting, My Lords. Kindly see.

14 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** That's the reason why they don't
15 stand on a different footing. President and the Government.

16 **KAPIL SIBAL:** 150. Very interesting, My Lords, kindly have a look at the Oath of Office which
17 my learned friend read and I'll show you the difference between that.

18 **CHIEF JUSTICE BR GAVAI:** 159.

19 **KAPIL SIBAL:** 159. Very interesting, My Lords. "I so and so, solemnly affirm that I will
20 faithfully execute the office of the Governor or discharge the functions of the Governor", name
21 of the state, My Lords. "And will, to the best of my ability, preserve, protect and defend the
22 Constitution of the law. And I will devote myself to the service and well-being of the people of
23 the State." Just see the Oath, My Lords. 159. It is very interesting, My Lords. He owes his
24 allegiance to the State, which gives you an indication, My Lords, as to what his Constitutional
25 responsibility is. And if you differentiate with the Oaths taken by ministers, it's very
26 interesting. See that. Third Schedule, My Lords, very interesting.

27 **CHIEF JUSTICE BR GAVAI:** As compared to the...

1 **KAPIL SIBAL:** Yes.

2 **CHIEF JUSTICE BR GAVAI:** ...to the people of... well-being of the people of India.

3 **KAPIL SIBAL:** Yes, it says... Oath of the Ministers says, "I will bear true and solemnly affirm
4 faith and allegiance to the Constitution of India." There it is defend, preserve and protect.
5 Preserve, protect and defend, which means he has no actual role in the functioning of the
6 Government. Here it is, "owe allegiance to the Constitution of India as by law established, that
7 I will uphold the Sovereignty and integrity of India", because he is the Sovereign himself, so
8 he will not take that oath, the Governor and the President, "that I would faithfully and
9 consciously discharge my duties as a Minister." That Oath will not be taken by the Governor,
10 because he has no duties to discharge. He's only a Constitutional titular head. "As a minister
11 for the Union do right in all manner of the people..."

12 **CHIEF JUSTICE BR GAVAI:** [UNCLEAR] office of Governor or discharge the functions
13 of the Governor.

14 **KAPIL SIBAL:** Correct and see further My Lords, "that I will do right in all manner of people
15 in accordance to the Constitution and the laws." Because he is actually the executive delivering
16 the will of the Legislature to the people of the country. He is the vehicle, the Executive is the
17 vehicle, to uphold the will of the people reflected in the Legislature which is a Sovereign act of
18 the Legislature. That's why the nature of the oaths are different, where it is preserve, protect
19 and defend. That's partly an answer to My Lord's question. Justice Narasimha's question as to
20 what does he do if he thinks, that this Bill something is not right with this Bill? Because he has
21 to preserve, protect and defend the Constitution. He may think there's something wrong with
22 it. So these are indications of the nature of the responsibilities of the Governor. So, forget the
23 word "veto".

24 And My Lords, the third aspect Your Lordships will have to consider also is, what do you mean
25 by discretion? There is no concept like discretion in 200. Where is the word 'discretion' used
26 in 200? Is either withhold assent, grant assent, refer it to the President, refer it to the
27 Legislature. Where is the discretion? The whole argument is made on discretion.

28 **CHIEF JUSTICE BR GAVAI:** Discretion either to do one of these three things.

29 **KAPIL SIBAL:** No My Lords, No. Discretion is advised if it used under 163(2) by or under
30 this Constitution. Read 163(2), with respect, with me. Both. "There shall be..." I'm sorry. Just
31 read 163(1) and (2), both. "There shall be a Council of Ministers with the Chief Minister as the
32 Head to aid and advice the Governor of the exercise of his functions except insofar as he is

1 by/or under this Constitution, required to exercise his functions or any of them in his
2 discretion."

3 **JUSTICE VIKRAM NATH:** Therefore you should say that in 200 he does not need the aid
4 and advice of the Council of Ministers to take a decision whether or not to grant, withhold or
5 refer to the President, reserve it for referring to the President or send it back, then he's
6 exercising his discretion.

7 **KAPIL SIBAL:** That Your Lordships are now, using a word of art to understand what exercise
8 of power. No My Lords that's a Constitutional duty. I'm sorry My Lords. That the Governor is
9 exercising a Constitutional duty in his discretion by/or under this Constitution. Kindly come
10 to 371(a). Just read with me.

11 **JUSTICE VIKRAM NATH:** Let us understand...

12 **KAPIL SIBAL:** I will straight away indicate to Your Lordships the argument. 371(a).

13 **JUSTICE VIKRAM NATH:** How does he take the decision on what basis that the
14 Governor...what application of mine?

15 **KAPIL SIBAL:** "By/or under this discretion" it has been explained thoroughly in **Nabam**
16 **Rebia**. I'll demonstrate that. 371(a). What does discretion mean in 163 (1) by/or under the
17 Constitution?

18 **JUSTICE VIKRAM NATH:** Yes.

19 **KAPIL SIBAL:** Kindly come to 371(a). It says, "Notwithstanding anything in this
20 Constitution. No act of Parliament in respect to..." Leave that out, My Lords. Kindly come to
21 (b). "The Governor of Nagaland shall have special responsibility." Now, note this. "With
22 respect to law and order in the State of Nagaland for so long as, in his opinion, internal
23 disturbances occurring in the Naga Hills, Tuensang area immediately before the formation of
24 the State continue therein or any part thereof, and in the discharge of his functions in relation
25 there to. And the Governor shall after consulting the Council of Ministers exercise his
26 individual judgment as to the action to be taken." Now, the Proviso. "Provided that if any
27 question arises, whether any matter is or is not a matter, in...as respects which the Governor
28 is under the sub-clause required to act in the exercise of his individual judgment, the decision
29 of the Governor in his discretion shall be final."

30 **CHIEF JUSTICE BR GAVAI:** This correlates to 163(2)?

1 **KAPIL SIBAL:** 163(1).

2 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** No, no, (2)?

3 **CHIEF JUSTICE BR GAVAI:** (2).

4 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Sub-Article 2, 163(2).

5 **CHIEF JUSTICE BR GAVAI:** 163(2), it is going to be final.

6 **KAPIL SIBAL:** No, that's been interpreted, I'm sorry Your Lordships. But, that's been
7 interpreted in ***Nabam Rebia***, that 163(2), there is no individual power of the Governor at all.
8 I'll show you the passage, the passage of ***Nabam Rebia***. Therefore, My Lords by/and under
9 this Constitution, it's 371(a), 371(h). And why My Lords it relates to Law and Order.

10 **CHIEF JUSTICE BR GAVAI:** For a particular State?

11 **KAPIL SIBAL:** Yes, yes. Your Lordships are putting to me this question, rightly, that that
12 also can be in his discretion. But that's not the meaning of 163(1). That's a Constitutional right,
13 or power or duty, whatever you may call it. And the same... this also... this is *qua* Executive
14 Power. Kindly notice this. 371(a) is Executive Power. It is not Legislative Power. It's *qua* Law
15 and Order, just like 144. When you go and somebody comes, 44... 144 should be imposed, and
16 this should happen or that should happen...what Your Lordships...'

17 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Because of the expression there in the
18 Proviso which says, which is a uniquely worded under 371(a), "Laws required to act in exercise
19 of his individual judgment." This is very, very different from the Sub-Article 2. Sub-Article 2
20 is almost identical, except that he doesn't use in the first part, "in exercise of his individual
21 judgment." But rest of the Article is one and the same.

22 **KAPIL SIBAL:** Correct. Now, this argument was made in ***Nabam Rebia*** by Counsel saying
23 that 163(2) is the power which allows the Governor to use his discretion, and that was in the
24 context of what My Lords? In the context of summoning the House. Your Lordships will
25 remember in ***Nabam Rebia*** what happened was, that the Governor summoned the House
26 without the aid and advice of the Council of Ministers. He summoned the House. Then he said,
27 "this is the Agenda of the House." "This is going to be the agenda of the House." Then he said,
28 "this item should be the item which should be voted first in that Agenda." In that context, the
29 argument made by Council for the Governor was that 163(2) is his individual judgment gives
30 him that right. Court said nothing doing. Right? That is only by or under this Constitution

1 relating to specific Articles of the Constitution. 371(a) is one of them referred to in **Nabam**
 2 **Rebia**. So, there is no such thing as discretion in Article 200. It's completely alien to 200.

3 Now, having said that, you will also have to understand when Your Lordships will have to
 4 probably reflect over it, even if there is discretion under the Constitution to be exercised by
 5 the Constitutional Authority, there are contours within which he must exercise or she must
 6 exercise that discretion. That's not the good, that's not the free will of the Governor, that in my
 7 discretion, I will withhold the Bill. That will be struck down immediately. That discretion has
 8 to be exercised in the contours of the concept of discretion.

9 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** The concept of discretion under Sub-
 10 Article 2 though repeatedly said, "it is subject to those which are specifically provided in the
 11 Constitution, [UNCLEAR] in the Constitution, invariably all those arose and identified, got
 12 identified by virtue of interpretation of the court." So we have, as a court a process by which
 13 we have identified, and said, this is a specific Constitutional provision by virtue of which it can
 14 be said that "it is a discretion vested in him by virtue of the Constitution."

15 **KAPIL SIBAL:** Right.

16 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** So it's in that same line that you have
 17 to see it's an inquiry by the court. Whether 200 keeps a kind of discretion in it or not. It's an
 18 inquiry and Constitutional larger principle, as you have indicated, in principles such as
 19 democracy, principles such as federalism, as adopted in **State of Punjab's** case are guided
 20 principles on the basis of which you would see and interpret whether such a discretion exists
 21 or not.

22 **KAPIL SIBAL:** My Lord, my humble submission to Your Lordships is that discretion is a
 23 concept alien to 200 and I will try and make that good.

24 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** No, discretion has indicated.

25 **KAPIL SIBAL:** No, but Your Lordship is saying that you'll have to see as a matter of
 26 interpretation, whether that concept can be incorporated in 200 as a matter of interpretation.

27 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Discretion as have been provided in
 28 the Constitution is expression of Sub-Article 2.

29 **KAPIL SIBAL:** But by/or under?

30 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** By/or under.

1 **KAPIL SIBAL:** No, My Lords, it is not by the Constitution.

2 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** They have not identified those
3 specific...

4 **KAPIL SIBAL:** They have, My Lords. *Nabam Rebia* identifies them. 239(2), 239(2),
5 371(a), 371(h). 200 is not there? 200 is not there?

6 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Yes, yes, you are right. We are on that
7 point only.

8 **KAPIL SIBAL:** So, therefore, the point is, it says by/or under the Constitution. *Shamsher*
9 *Singh*, majority says the same thing. The point I'm making is why do you want to incorporate
10 something that clearly is not there in the Constitution? And if you were to exercise, he were to
11 exercise, if she were to exercise the power of discretion, what is the... If he or she were to
12 exercise that power of discretion, what are the contours reflected in 200 by which that exercise
13 can be done? None.

14 **JUSTICE VIKRAM NATH:** Therefore, again, the same question, Mr. Sibal, how does the
15 Governor take a decision under 200(1)?

16 **KAPIL SIBAL:** My Lords, I will tell Your Lordships the problem there. My Lords, I've
17 reflected on it for a long time. I'll show you why. Now, read 200 with me.

18 **JUSTICE VIKRAM NATH:** Yes.

19 **KAPIL SIBAL:** For a minute. The problem that arises and for Your Lordships too... you may
20 even reject my argument. But there's something to be said for that. Kindly see.

21 **JUSTICE VIKRAM NATH:** We want to understand whatever...

22 **KAPIL SIBAL:** Now, see 200 with me, My Lords. We have the Proviso. I'll now assume that
23 the Government will aid and advise the Governor. I'll assume that now, before he sends it back.

24 **JUSTICE VIKRAM NATH:** I put you that question earlier, whether the Governor acts on
25 the aid and advice of the Council of Ministers while taking a decision under 200? You said no,
26 correct?

27 **KAPIL SIBAL:** I said no, *qua* the amendments only, *qua* the amendments. Now kindly see
28 that. Read with me.

1 **JUSTICE VIKRAM NATH:** How is he taking that decision? Either you say that he's acting
2 on the aid and advice of the Council of Ministers...

3 **KAPIL SIBAL:** Read the Proviso for a minute, My Lords. Read it.

4 **JUSTICE VIKRAM NATH:** No, read the Proviso, the main part, the first part.

5 **KAPIL SIBAL:** Alright, I'll read. "When a Bill has been passed by the Legislative Assembly
6 of a state or in case of a state having a Legislative Council has passed a Bill by both Houses of
7 the Legislature of a state, which shall be represented to the Governor and the Governor shall
8 declare..."

9 **JUSTICE VIKRAM NATH:** The Governor shall declare...

10 **KAPIL SIBAL:** Also, the question not been answered, what does declare mean. Your
11 Lordship, Lord Justice Surya Kant asked the question. Not been answered. I'll try and answer
12 that. "Declare either that he assents to the Bill", correct? No problem. "Or that he withholds
13 assent." No problem. Therefrom, "or that he reserves the Bill for the consideration of the
14 President". Correct?

15 **JUSTICE VIKRAM NATH:** How does he take any of these three decisions?

16 **KAPIL SIBAL:** Just see, read the Proviso, My Lords. I'll come to that just now. For a minute.
17 Let me answer this. I'll answer what My Lord is putting to me. I'll read the Proviso. "Provided
18 that the Governor may as soon as possible after the presentation..."

19 **JUSTICE VIKRAM NATH:** This is not a mandatory requirement for him. If he grants
20 assent, then there is no need for the Proviso, the Proviso becomes irrelevant then. So, or if he
21 reserves for the President, then also the Proviso is not relevant at this stage.

22 **KAPIL SIBAL:** Let me answer that.

23 **JUSTICE VIKRAM NATH:** How can he take the decision of whether reserving for the
24 President or withholding it?

25 **KAPIL SIBAL:** So there are two interpretations to that. Number one.

26 **JUSTICE VIKRAM NATH:** On whose advice and on his own wisdom?

1 **KAPIL SIBAL:** That's right. There are two interpretations. That's what I'm saying, either the
2 Government of the day tells him reserve it for the consideration of the President.

3 **CHIEF JUSTICE BR GAVAI:** On the aid and advice of the...

4 **KAPIL SIBAL:** Yes, that's Dr. Singhvi's first alternative argument. I say no. I say no, of
5 course. It's my argument no, because if he is going to refer it to the President on aid and advice
6 of Council of Ministers, why would the Bill be sent to him. Therefore, it's obvious. This is
7 obvious, it's a no brainer, My Lords, according to me. Therefore, there is an element, not of
8 discretion, of a Constitutional responsibility.

9 **JUSTICE VIKRAM NATH:** That's right.

10 **KAPIL SIBAL:** That's what I'm saying, My Lords. Now read the Proviso with me. It's
11 interesting, My Lords. "Provided that...", I wanted to liven up the proceedings, therefore, I am
12 not reading through judgments, My Lords.

13 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Yes. That's right. It's more
14 interesting.

15 **KAPIL SIBAL:** "Provided that the Governor may, as soon as possible after the presentation
16 to him of the Bill for assent, return the Bill. And if it is not a money Bill, together with the
17 message requesting that the House or Houses will reconsider the Bill or any specified
18 provisions thereof, and in particular, will consider the desirability of introducing any such
19 amendments as he may recommend in his message. And when a Bill is so returned, the House
20 or Houses shall reconsider the Bill accordingly. And if the Bill is passed again..." Now you read
21 the word "if the bill is passed again". My Lords, if the Bill is returned on the aid and advice,
22 where's the question of if the Bill is passed again? So therefore, I am not agreeing with the first
23 argument of Dr. Singhvi My Lords. This is my case. It's my case

24 **JUSTICE VIKRAM NATH:** Then how does he write his message? That's also his case.

25 **KAPIL SIBAL:** Therefore that's that Constitutional responsibility. After all, as I said, he's not
26 a postman. There I agree with him. There is some play in the joints.

27 **JUSTICE VIKRAM NATH:** So you agree that he's not a postman.

28 **KAPIL SIBAL:** He's certainly not a postman.

29 **JUSTICE VIKRAM NATH:** Correct.

1 **KAPIL SIBAL:** Certainly not a postman, but there is that limited play in the joints. What is
2 that play? If he feels that this requires the consideration of the President, he can consult
3 lawyers, he can consult and refer it to the President, or if he feels that some amendments are
4 required, that's a suggestion because he's not the deciding authority. So he sends it back. That's
5 perfectly workable. That's what makes the Constitution work. If it's only on the aid and advice
6 to the Council of Minister with no leeway, what's the point of having a Governor then? Then
7 how will it work? If it only works for collaborative exercise of Constitutional authorities.

8 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** That's the correct word.

9 **KAPIL SIBAL:** That's how we must interpret the Constitution. Otherwise My Lords...

10 **JUSTICE VIKRAM NATH:** All right.

11 **KAPIL SIBAL:** Now My Lords, just see some Constitutional Principles. Then I'll... there is
12 enough time. Now kindly see My Lords, as I said no... Your Lordships may just note these
13 principles so that Your Lordships may....there is no principle of Constitutional Law.

14 **JUSTICE VIKRAM NATH:** It's there in you written note?

15 **KAPIL SIBAL:** I can put it My Lords.

16 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** You have already done it.

17 **JUSTICE VIKRAM NATH:** We have got your written notes.

18 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** Initial.

19 **KAPIL SIBAL:** No, no, no. That should be effaced My Lords because...

20 **JUSTICE VIKRAM NATH:** Just now only it has been uploaded?

21 **KAPIL SIBAL:** Yes, just now.

22 **JUSTICE VIKRAM NATH:** Yes, the same one?

23 **KAPIL SIBAL:** Same one.

24 **JUSTICE VIKRAM NATH:** 2.4?

25 **KAPIL SIBAL:** 2.4.

- 1 **CHIEF JUSTICE BR GAVAI:** With some proposition which are new.
- 2 **JUSTICE VIKRAM NATH:** Which are new.
- 3 **KAPIL SIBAL:** The reason is when I introduced that particular note, I didn't hear the learned
4 Solicitor General's arguments. So I have to really deal with very serious arguments made him,
5 so I had to make a new note My Lords.
- 6 **CHIEF JUSTICE BR GAVAI:** And also you did not have the benefit of hearing to Dr.
7 Singhvi's arguments.
- 8 **KAPIL SIBAL:** I also did not have the benefit of that My Lords.
- 9 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** 1.4. 1.4 is that? 2.4?
- 10 **KAPIL SIBAL:** 2.4 My Lords. 2.4 are my submissions.
- 11 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It is not included.
- 12 **KAPIL SIBAL:** Not included. I'll put it, I'll include it. Let me read it then. I'll read them and
13 then I'll include it. It says, "There's no principle of Constitutional Law which allows for the
14 breakdown of Constitutional machinery." So this blanket I will not, withhold consent is just
15 not on My Lords. Two.
- 16 **CHIEF JUSTICE BR GAVAI:** You withhold the consent endlessly....
- 17 **KAPIL SIBAL:** Endlessly. It is just not on My Lords. It's... no, it is anathema to the
18 Constitution. The very concept of withholding assent. Timeline is a different issue and I'll come
19 to that My Lords.
- 20 **JUSTICE VIKRAM NATH:** You cannot sit over the wisdom of the Legislature throughout
21 the... Agreed.
- 22 **KAPIL SIBAL:** That's right My Lords. Two, "Each organ of the State must function to ensure
23 that it does not act as an impediment in the functioning of the other organ." That's the second
24 principle of Constitutional Law.
- 25 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** No organ can impair the functioning
26 of the other.

1 **KAPIL SIBAL:** Exactly. And in the context of separation of powers, you can't argue that the
 2 Executive has a Legislative role to play. It's anathema. How can you argue that? It will go
 3 against Federal Principles because we have a new definition of Federalism, which Your
 4 Lordships will also consider.

5 Three, "the working of a Constitution is a collaborative Constitutional exercise. It's not
 6 combative." This is as if it's combative. I will withhold it. It is non-justiciable. So you cannot
 7 even ask me. That's a combative position, not a collaborative position. "Any disputes in respect
 8 thereof requires the Supreme Court of India to be the final arbiter. While interpreting the
 9 Constitution, the fundamental premise of a court is to ensure that each pillar of the State under
 10 the Constitution, exercises powers in accordance to the provisions thereof, and discharges its
 11 duty that's provided for within the Constitutional framework, not outside it. While
 12 interpreting the Constitution, the court must, as a matter of principle, lean towards
 13 interpreting the words therein to allow for solutions to make provisions of the Constitution
 14 workable and not lean towards the Constitutional interpretation that makes it unworkable."
 15 And no organ of the State has absolute power. That's the other very, very sound Constitutional
 16 principle. "No organ of the State". Neither the Legislature, nor the.

17 **CHIEF JUSTICE BR GAVAI:** Nor the Executive, nor the Judiciary?

18 **KAPIL SIBAL:** No. Only one with absolute power, master of the roster --- that's absolute
 19 power,

20 **CHIEF JUSTICE BR GAVAI:** That's absolute power.

21 **KAPIL SIBAL:** That's absolute power. Nobody can challenge it. In a lighter vein My Lords,
 22 in a lighter vein.

23 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It is done with a great amount of
 24 restraint.

25 **KAPIL SIBAL:** In a lighter vein.

26 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** It's done with a great amount of
 27 restraint.

28 **KAPIL SIBAL:** My Lords, don't take it amiss. I just said it in a lighter vein.

29 **CHIEF JUSTICE BR GAVAI:** [INAUDIBLE]

1 **KAPIL SIBAL:** I agree. I agree My Lords. Since Your Lordships put it to me...

2 **CHIEF JUSTICE BR GAVAI:** I have only now two months or something left. Some message
3 for three of them.

4 **JUSTICE SURYA KANT:** And I have definitely not heard what you answered.

5 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** I am far away.

6 **KAPIL SIBAL:** Miles to go.

7 **TUSHAR MEHTA:** Forget by the time Your Lordships.. says this....

8 **KAPIL SIBAL:** Then the next is, "Responsibilities of all organs of the State functioning under
9 the Constitution must be guided by the principle of preserving, not thwarting, the democratic
10 process." They must preserve the democratic process. "And a judicial interpretation of the
11 Constitution cannot nullify, defeat or distort the Constitutional provision, by so interpreting
12 the Constitution as to prevent an Act of the Executive from not being amenable to judicial
13 accountability." You can't interpret it and say this is not amenable to judicial accountability,
14 because I have some absolute power. "And Constitutional provisions are require to be
15 interpreted and understood with an object oriented role... " that Dr. Singhvi has already
16 mentioned My Lords. "And when interpreting the Constitution, which is meant to endure the
17 test of time given the stresses and strains of changing circumstances, the court's approach
18 should provide for a workable resolution consistent with the object underlying the
19 Constitutional Provision." So, these are broad principles that are supported by judgments. My
20 Lords, I'll add it to the Note for Your Lordships.

21 Now, let's have a look at My Lords, let's now go to the Provision itself. Kindly come to my Note.
22 The other thing about justiciability, which the other argument broad I'll just indicate, what my
23 submissions are going to be there. My Lords, my learned friend's submission was that I am
24 not saying there's no judicial review. All I'm saying is just not justiciable. It's just not
25 justiciable. Because there are no manageable standards. That's what he said. There are no
26 manageable standards to make it justifiable.

27 **CHIEF JUSTICE BR GAVAI:** Unlike 356.

28 **KAPIL SIBAL:** Unlike 356. But 356 has the word 'satisfaction'. Your Lordship knows 356. It
29 is the satisfaction of the Governor. 311(2) is the satisfaction of the Governor. Now, satisfaction
30 implies an element of subjectivity. And therefore, in **Bommai** and other cases, Your

Lordships have held that look, "we will go thus far but no further." That's absent in 200. There is no subjective element there. Therefore, the nature of the exercise of power under 356, and under 161 and in 311(2) is qualitatively different from the nature of exercise of power under 200. Therefore, those principles just cannot apply. My Lords, what are judicially manageable standards, are normally in the domain of the Executive. Normally in the domain of the Executive, not in the domain of the Legislature, because Legislative Acts will be will be challenged in a Court of Law and violations of Part 3 or other lack of competence. They are all judicially manageable standards. Take Article 14, My Lords. Does Article 14 have a definition? No, but it's manageable. What is equality? You'll have to decide on case-to-case basis whether the equality has been violated or not, but it's manageable. Why? Because there's a fundamental principle of equality, which runs through the Constitution itself. Arbitrariness cannot be defined. Liberty cannot be defined, yet it is manageable because it has Constitutional implications on freedoms.

Well, how do you say 200 has no manageable standards? What's the relevance of that? All standards which are not manageable are in the domain of the Executive. What kind of crowd shelter should be? Should the court say you should pass directions that *puja* should be held here and not there? This is not manageable. This procession should not move in this direction or that direction. Not manageable by the court. But that's Executive responsibility. But in the area of Legislative responsibility, all standards are manageable because it's on the touchstone of the Constitution. Whether it's lack of authority, lack of competence or violation of provisions of the Constitution. Therefore, this whole argument that it is not manageable.

For example, let's take, for example, because I think it's a rule of evidence, actually. Manageable standards... not being able to manage standards is a rule of evidence because you don't have any evidence to actually manage it. Take, for example, the communication between husband and wife, Solicitor and Client; there are no manageable standards to deal with it. That's a rule of evidence because the court doesn't have the wherewithal, doesn't have the facts in its possession to be able to manage the situation. That's a rule of evidence. You don't have enough evidence. That's far removed from 200.

Now, let us kindly have a look at 2.4. This one, page 815.

CHIEF JUSTICE BR GAVAI: Volume 2.4?

KAPIL SIBAL: 2.4.

JUSTICE VIKRAM NATH: Page no. 815?

1 **KAPIL SIBAL:** Yes.

2 **JUSTICE VIKRAM NATH:** Small (iii)

3 **KAPIL SIBAL:** Small (iii). Page 815.

4 **CHIEF JUSTICE BR GAVAI:** We're utilising your time for some other proceedings.

5 **KAPIL SIBAL:** That's fine. Yes, I understand that. Well, kindly come to page 3, or rather 815,
6 Internal page (iii)

7 **CHIEF JUSTICE BR GAVAI:** Big 815, small (iii)?

8 **KAPIL SIBAL:** Yes. "The Constitutional premise for interpreting provisions is grounded in
9 though not limited to constitutionalism, separation of powers, federalism, reasonableness and
10 democracy. And under the framework of 'separation of power', the Legislature legislates, the
11 Executive implements, and the judiciary adjudicates upon disputes relating to both, ordinary
12 and under the Constitution. This basic premise does not allow the Executive to exercise
13 primacy over law-making. The Executive must function under the consistent limitations upon
14 it by the Constitution. 53(1) of the Constitution states that the Executive power of the Union
15 shall be vested in the President and shall be exercised by him either directly or through officers
16 subordinate to him in accordance with the Constitution." Now, My Lord, this is important. The
17 Executive power will vest in him and be exercised either directly or through officers
18 subordinate to him in accordance with the Constitution. The officers also cannot act outside
19 the Constitution. Therefore, this is the power to execute Legislation. That's what it means.
20 That's all that they are obliged to do. They can't thwart Legislation.

21 **CHIEF JUSTICE BR GAVAI:** Power to formally execute the Legislation.

22 **KAPIL SIBAL:** Yes, formally, naturally, My Lord. Formally.

23 **CHIEF JUSTICE BR GAVAI:** But there lies some discussion with them, with the Governor,
24 that for some reason it may withhold and send it back to the Legislature.

25 **KAPIL SIBAL:** Yes.

26 **CHIEF JUSTICE BR GAVAI:** With a discretion.

27 **KAPIL SIBAL:** Again, you are also using the word "discretion", my apologies. That's his
28 obligation.

1 **JUSTICE VIKRAM NATH:** Obligation. All right. Obligation. That's the option he has, to
2 exercise.

3 **KAPIL SIBAL:** He has to Constitutionally exercise that option.

4 **CHIEF JUSTICE BR GAVAI:** The word "discretion" is a problem for them.

5 **KAPIL SIBAL:** No, it's not a problem, My Lords. What happens is, once you use... this was
6 used loosely in other judgments, which is what has created the problem. For example, it is said
7 239(2) is a discretionary power. It's not.

8 **JUSTICE VIKRAM NATH:** You may say so, it's not discretionary that he has option A and
9 B.

10 **KAPIL SIBAL:** No, no, that's a Constitutional obligation again, 239(2). Because he'll run the
11 Government, My Lords, through the Union. He's a Lieutenant Governor. There was no...
12 What's the discretion there? The concept of discretion is alien to 239(2). But yet this court, in
13 passing, uses the word "discretion", My Lords. So this is what happens if you use the word,
14 then you start interpreting the...

15 **JUSTICE VIKRAM NATH:** He takes a decision.

16 **KAPIL SIBAL:** *Haan*, he takes a decision.

17 **JUSTICE VIKRAM NATH:** He takes a decision.

18 **KAPIL SIBAL:** That's right. That's what he's doing. That's his Constitutional right or
19 obligation. That's all I'm saying, My Lords. What happens is, if you use it, then in other cases
20 when matters come up, they say, the Constitutional Bench used it in this fashion, so use
21 discretion. This is what happens.

22 **JUSTICE VIKRAM NATH:** But then that decision taken by him, whether it's justiciable or
23 not?

24 **KAPIL SIBAL:** Which one?

25 **JUSTICE VIKRAM NATH:** The Governor's decision under 200.

26 **KAPIL SIBAL:** Certainly not. If he assents to the bill, it's a certainly not.

27 **JUSTICE VIKRAM NATH:** No, of course it is.

- 1 **KAPIL SIBAL:** He takes no decision.
- 2 **JUSTICE VIKRAM NATH:** ... The Act is to be challenged.
- 3 **KAPIL SIBAL:** My Lords, that's 200...
- 4 **JUSTICE VIKRAM NATH:** Or if he reserves this for the President.
- 5 **KAPIL SIBAL:** That's not his decision. It's a recommendation.
- 6 **JUSTICE VIKRAM NATH:** That's his decision too.
- 7 **KAPIL SIBAL:** No, no, no, no, My Lords. This is, again, a fallacy as a matter of law.
- 8 **JUSTICE VIKRAM NATH:** He may reserve it for the [INAUDIBLE]...
- 9 **KAPIL SIBAL:** It is his opinion. I'm sorry.
- 10 **JUSTICE VIKRAM NATH:** ... For a justifiable reason and...
- 11 **KAPIL SIBAL:** It is a decision and...
- 12 **JUSTICE VIKRAM NATH:** It can be challenged.
- 13 **KAPIL SIBAL:** A decision as an element of finality. It is his opinion that this requires
14 reconsideration of the President. That's all.
- 15 **JUSTICE VIKRAM NATH:** That declaration he has to make that he's reserving it for the
16 President. Whether that declaration is justifiable or...
- 17 **KAPIL SIBAL:** Of course.
- 18 **JUSTICE VIKRAM NATH:** ... completely unjustified and unwarranted. Whether it can be
19 challenged or not?
- 20 **KAPIL SIBAL:** It can never be challenged.
- 21 **JUSTICE VIKRAM NATH:** It can never be challenged.
- 22 **KAPIL SIBAL:** It can never be challenge. No question of it being challenged.
- 23 **JUSTICE VIKRAM NATH:** That's what the other side is also arguing.

- 1 **KAPIL SIBAL:** No there... Nobody has ever challenged it, My Lords. Again, that's a chimera.
2 Who has ever challenged it? He has also said, assent is justice.
- 3 **JUSTICE VIKRAM NATH:** On your side, there are arguments which are self-conflicting,
4 you know, or contradictory. You are taking a different stand, Dr. Singhvi took a different stand.
- 5 **KAPIL SIBAL:** No, no, no. It's only on one point I'm taking a different stand with Dr. Singhvi.
6 That's on the first. We're agreed. Yes. Yes. We've agreed.
- 7 **JUSTICE VIKRAM NATH:** We'll hear them whether they decide to have a different stand
8 or not.
- 9 **KAPIL SIBAL:** It's only on one.
- 10 **CHIEF JUSTICE BR GAVAI:** They have a different stand or not. Mr. Sankaranarayanan
11 said that he's on a middle path.
- 12 **KAPIL SIBAL:** No, no, no.
- 13 **COUNSEL:** We're on both sides.
- 14 **KAPIL SIBAL:** Both sides. Not just... How can assent be justiciable, My Lords? And who has
15 ever...
- 16 **JUSTICE VIKRAM NATH:** Assent will not be justiciable once he grants it...
- 17 **KAPIL SIBAL:** That's the argument made. That way, assent is also justiciable. That's an
18 argument made. Nobody has ever said that assent is justiciable. Nobody has ever said that if
19 you send it to the consideration of the President, that is justiciable. Nobody has ever said that.
20 It's nobody's argument. It's been never argued in any case. It's something that he has assumed
21 and said even that should be justiciable. It's not our case. It's nobody's case.
- 22 **JUSTICE VIKRAM NATH:** On one point, you are together, on the same page?
- 23 **KAPIL SIBAL:** Which one, My Lord?
- 24 **JUSTICE VIKRAM NATH:** This is not justiciable.
- 25 **KAPIL SIBAL:** I am Kamath. How can we be together? But he is not Babasaheb. I may be
26 Kamath, My Lords.

1 **TUSHAR MEHTA:** Mr. Kamath used to oppose everyone.

2 **CHIEF JUSTICE BR GAVAI:** And who is Mr. Naziruddin Ahmad?

3 **TUSHAR MEHTA:** Naziruddin, yes.

4 **CHIEF JUSTICE BR GAVAI:** Mr. Kamath, he did not oppose everything. It was Mr.
5 Naziruddin Ahmad who opposed every suggestion of Dr. Ambedkar.

6 **TUSHAR MEHTA:** *Haan*. But Mr. Kamath used to oppose others as well, particularly Dr.
7 Ambedkar.

8 **KAPIL SIBAL:** So this principle is contained in the oath taken by the President. I have
9 already shown that to Your Lordship. Oh, sorry, My Lord. (v) is that, “In accordance with the
10 Constitution necessarily means that the Executive Power as exercised by the President, is not
11 absolute. It must function within the limitations and in accordance with the processes of the
12 Constitution. In other words, the exercise of Executive Power must be in alignment with the
13 Constitution”. Then (vi) “The principle... this principle is also contained in the oath taken by
14 the President”. My Lords, I have already shown that to Your Lordships.

15 Then paragraph (vii). “Once Article 73(1) and 162(1) define the Executive Power of the Union
16 and the State respectively. Under 73, the Executive Power of the Union shall extend to matters
17 with respect to which Parliament has power to make laws”. So it's limited to at List 1 matter.
18 And, My Lords, under 162, “The Executive power of the state shall extend to matters with
19 respect to which Legislature has the power to make laws”. But it has no Legislative function in
20 that. “Under 73 and 162, it is clear that the power to make law is vested exclusively in the
21 Legislature and administrative power of Executive is coterminous with Legislative power.
22 Further, both provisions begin with subject to the provisions of the Constitution”. That's very
23 important My Lords. So that Executive power is also subject to the provisions of the
24 Constitution. So, therefore, that act of the Executive will be subjected to scrutiny. And if it
25 transgresses Executive Power, it will be struck down. So you cannot interpret the transgression
26 as a power which allows only one provision of the Constitution, withholding consent, would
27 be Executive Power that overrides the Legislature. It goes against the very fundamentals My
28 Lords of Parliamentary Democracy.

29 Then, under 74, “There shall be a Council of Ministers with the Prime Minister at the head to
30 aid and advise the President who shall, in the exercise of his functions, act in accordance with
31 such advice. The Provision stipulates that while discharging his functions entrusted to him
32 under the Constitution, the President must act on the aid and advice of the Council of

1 Ministers.” My learned friend, also, My Lords, conceded when we were interpreting 111, if Your
 2 Lordships would remember, that when Parliament makes a law and sends it to the President,
 3 My Lords, he has no power to withhold.

4 **CHIEF JUSTICE BR GAVAI:** No, he can send it back.

5 **JUSTICE VIKRAM NATH:** Once.

6 **CHIEF JUSTICE BR GAVAI:** Once.

7 **KAPIL SIBAL:** That's all. But that's the very power here, My Lords.

8 **JUSTICE VIKRAM NATH:** Once he can withhold.

9 **KAPIL SIBAL:** Yes, but the word “withholding consent” is there. But there is no absolute
 10 power there to withhold. So how is it, My Lords, that that withholding consent, he has no
 11 power, but the Governor has? It can't be, My Lords. 311, that very expression is there. Yes.
 12 “When a Bill has been passed by the Houses of Parliament, it shall be presented to the
 13 President, and the President shall declare either that he assents to the bill or he withholds
 14 assent”.

15 **JUSTICE VIKRAM NATH:** And thereafter the Proviso?

16 **KAPIL SIBAL:** Then it's provided that the President may as soon as possible... same thing,
 17 My Lords. So, therefore, here withholding consent is not absolute, no absolute power to
 18 withhold consent. But the interpretation is in 200 he has that absolute power. So the same
 19 expression used in two Articles would be interpreted differently by this court. That's what my
 20 learned friend wants Your Lordships to do.

21 **JUSTICE PAMIDIGHANTAM SRI NARASIMHA:** There's another thing, difference in
 22 the Executive Power.

23 **KAPIL SIBAL:** Yes, it's the same thing. And My Lords, kindly see, I'm not there... Now that
 24 I'm in that, read 200 once again with me. It's very interesting. The Second Proviso to 200. It's
 25 very interesting. Second Proviso to 200. I'm digressing a bit, My Lords. It just occurred to me.
 26 Sorry. “Provided further that the Governor shall not assent to, but shall reserve for the
 27 consideration of the President any Bill, which in the opinion of the Governor would, if it
 28 became law, so derogate from the powers of the High Court.” “Shall not assent to”.

29 **JUSTICE VIKRAM NATH:** Yes.

- 1 **KAPIL SIBAL:** Different from “withholding assent“. It's my learned friend's argument,
2 withholding assent, it “shall not assent to.” Permanently.
- 3 **CHIEF JUSTICE BR GAVAI:** So according to you, where an absolute power was intended
4 by the Constitution.
- 5 **KAPIL SIBAL:** Yes.
- 6 **CHIEF JUSTICE BR GAVAI:** Not to give assent.
- 7 **KAPIL SIBAL:** Yes
- 8 **CHIEF JUSTICE BR GAVAI:** This specific mention has been made by the Constitution.
- 9 **KAPIL SIBAL:** That's right.
- 10 **CHIEF JUSTICE BR GAVAI:** In the Constitution.
- 11 **KAPIL SIBAL:** In the Constitution.
- 12 **CHIEF JUSTICE BR GAVAI:** Therefore, that can't be read in the first proviso.
- 13 **KAPIL SIBAL:** Absolutely.
- 14 **CHIEF JUSTICE BR GAVAI:** Or in the main..
- 15 **KAPIL SIBAL:** That's correct. The concept of withholding is itself a temporary concept, My
16 Lords. Withhold, send it back. Withhold, send it to the President. Right? That act of
17 withholding is an act.
- 18 **JUSTICE VIKRAM NATH:** For that, these two...
- 19 **KAPIL SIBAL:** For that. For that only. I'll do it tomorrow, My Lords, now?
- 20 **CHIEF JUSTICE BR GAVAI:** There was a request from your side that somebody wanted
21 to... From what? State of Madhya Pradesh. Who is that person?
- 22 **KAPIL SIBAL:** Himachal, My Lords. Not Madhya Pradesh.
- 23 **CHIEF JUSTICE BR GAVAI:** Yes, Himachal.
- 24 **KAPIL SIBAL:** We are giving him time, My Lords. We'll give him time.

1 **CHIEF JUSTICE BR GAVAI:** He has a personal difficulty next week. So he wanted some
2 precedence tomorrow. That's... we'll have to reconsider.

3 **KAPIL SIBAL:** I will. I will. He's an old colleague of mine.

4 **JUSTICE VIKRAM NATH:** You'll deal with him.

5 **KAPIL SIBAL:** I can't deal with him. He's elder to me, My Lords.

6 **CHIEF JUSTICE BR GAVAI:** Some marriage in the family.

7 **TUSHAR MEHTA:** Yes, yes. Mr. Sibal appeared for West Bengal.

8 **CHIEF JUSTICE BR GAVAI:** No, no, no. For Himachal Pradesh.

9 **TUSHAR MEHTA:** No, no, no. Mr. Sibal.

10 **JUSTICE VIKRAM NATH:** Mr. Sibal appears for West Bengal, yes.

11 **CHIEF JUSTICE BR GAVAI:** He has given up Karnataka.

12 **KAPIL SIBAL:** Because otherwise, My Lords, my colleague, Subramaniam Swami, I mean,
13 Gopal Subramaniam Swami, he's also a colleague, My Lords, so that's all right. He will not get
14 time.

15 **CHIEF JUSTICE BR GAVAI:** Do you want him also to come here?

16 **KAPIL SIBAL:** He would have, My Lords, except that he has some difficulty. Obligated, My
17 Lords. Deeply obliged.

18 <<<END OF DAY'S PROCEEDINGS>>>

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END OF DAY'S PROCEEDINGS